CITY OF NEWPORT BEACH PLANNING COMMISSION AGENDA COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD THURSDAY, SEPTEMBER 6, 2012 STUDY SESSION - 5:00 p.m. to 6:00 p.m.

MICHAEL TOERGE Chair

BRADLEY HILLGREN Vice Chair

FRED AMERI Secretary

KORY KRAMER
JAY MYERS
LARRY TUCKER

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director
BRENDA WISNESKI, Deputy Community
Development Director

LEONIE MULVIHILL, Assistant City Attorney

NOTICE TO THE PUBLIC

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

A. ROLL CALL

B. CURRENT BUSINESS

ITEM NO. 1 Update to the City's Wireless Telecommunications Facilities Ordinance (PA2012-057)

Code Amendment No. 2012-004 is an amendment to the Newport Beach Municipal Code (NBMC) to update regulations regarding wireless telecommunication facilities (telecom facilities) on public or private properties. Current regulations contained in Chapter 15.70 (Wireless Telecommunications Facilities) are proposed to be updated and incorporated within Title 20 (Planning and Zoning) of the NBMC, and Chapter 15.70 would be rescinded in its entirety.

C. PUBLIC COMMENTS

Public comments are invited on items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.

D. ADJOURNMENT

CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 6, 2012 – Study Session Agenda Item No. 1

SUBJECT: Wireless Telecommunications Facilities Ordinance (PA2012-057)

• Code Amendment No. CA2012-004

PLANNER: James Campbell, Principal Planner

(949) 644-3210, jcampbell@newportbeachca.gov

PROJECT SUMMARY

An amendment to the Newport Beach Municipal Code ("NBMC") to update regulations regarding wireless telecommunication facilities ("Telecom Facilities"). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

RECOMMENDED ACTION

Direct staff to modify the proposed draft ordinance as recommended in this report and return to the Planning Commission with the proposed amendment to the NBMC.

DISCUSSION

The proposed code amendment is a comprehensive update to the existing Wireless Telecommunications Facilities Ordinance ("Telecom Ordinance"). The amendment is intended to balance the needs of the community and the increasing demand for wireless networks, while mitigating the impact of Telecom Facilities in the community through effective design and screening techniques. The proposed amendment is also intended to reflect current federal and state law, and legal precedent.

This item was introduced to the Planning Commission on July 19, 2012, and was continued at the request of staff after receiving several letters from telecommunications industry representatives and interested parties. The Commission requested that staff meet and confer with the industry representatives or other interested parties. The Commission also requested the item be presented at a future study session. Staff, industry representatives, and interested parties met on July 25, 2012. After review of the correspondence previously received and the meeting on July 25th, staff recommends changes to the draft ordinance and seeks Commission direction.

Comments, Responses and Recommendations

The following discussion summarizes the primary concerns or issues raised by stakeholders and staff's response and recommended action. The proposed draft ordinance as provided in

Attachment PC-1, includes highlights and abbreviated comments consistent with the discussion below.

1. Discretionary Permit Process [Sections 20.49.020 and 20.49.070]

Comment: Industry representatives have requested an administrative process and a limited use of discretionary review. Additionally, comments suggest that applying the discretionary process to facilities proposed within the public right-of-way violates state or case law.

Response and Recommendation: One purpose of the proposed ordinance is to provide a review process and public notice of proposed facilities through the existing land use entitlement process. Staff believes that the discretionary process is appropriate for visible facilities whether on public or private property or within the public right-of-way. Additionally, staff believes the discretionary process is a reasonable exercise of the City's right to control the time, place and manner Telecom Facilities are established within the public right-of-way. To address the concern that the discretionary process is applied too broadly, staff recommends that Class 1 facilities located on both private and public property be administratively approved without providing notice to the public.

2. Legal Nonconforming facilities [Section 20.49.020 (F)]

Comment: Will existing facilities be required to be changed or phased out in the future?

Response and Recommendation: This subsection provides for the maintenance and continuation of existing facilities that were lawfully constructed but would be considered nonconforming because they would not comply with the provisions of the proposed ordinance. These legal nonconforming facilities would not be required to be modified or amortized. Future facilities proposed or the future modification of existing facilities would be required to comply with the adopted Telecom Ordinance. The subsection also provides guidance for pending applications. Staff recommends that this section be clarified to avoid any possible confusion as to what standards apply to previously approved facilities and pending applications.

3. Definitions [Section 20.49.030]

Comment: Definitions are confusing and need to be clarified or modified to be clearer and to be consistent with federal law. Staff received a comment regarding the location of the definitions within the Zoning Code.

Response and Recommendation: Staff believes that the location of the definitions is appropriate given their very specific nature, but recommends that a number of definitions be clarified and/or eliminated to ease ordinance implementation.

4. Technology requirements [Section 20.49.040]

Comment: Comments were received indicating that the use of, "...the most efficient, diminutive and least obtrusive technology..." is inappropriate and could theoretically be used to discriminate among carriers based upon their technology.

Response and Recommendation: The current ordinance in effect provides this policy language; however, the key factor is that a new facility be unobtrusive. The draft ordinance includes language in Section 20.49.010 (B) indicating that the Telecom Ordinance cannot be applied in a manner that as to unreasonably discriminate among providers of functionally equivalent services. Staff recommends that Section 20.49.040 be modified to stress that new facilities be designed to be as unobtrusive as possible.

5. Location Preferences [Section 20.49.050]

Comment: The proposed classification system is confusing and should be clarified.

Response and Recommendation: The draft ordinance would create 5 classes of facilities for the purpose of identifying preferred locations, design standards, and permitting. The 5 proposed classes are: Class 1 (Camouflaged/Screened), Class 2 (Collocation), Class 3 (Visible), Class 4 (Free Standing Structure), and Class 5 (Temporary).

Staff recommends Class 1 facilities be called "Screened/Stealth" as camouflaging a facility may likely be applied to other classes and might cause confusion as to what classification applies. Staff also recommends the elimination of Class 2 (Collocation) as it is a design technique that could also lead to confusion with other classes. Collocation would be encouraged, but it would not need to be a separate antenna classification. Lastly, staff recommends the creation of a new class for facilities proposed within the public right-of-way to establish a separate process to address issues that are unique to locations within the public right-of-way.

6. Location Preferences, Prohibited Locations [Section 20.49.050 (B)]

Comment: Industry representatives indicate a need to access all zones including residential areas.

Response and Recommendation: The current ordinance does not allow Telecom Facilities to be installed on residential lots (including residential portions of Planned Communities or Specific Plans) or in passive open space zones except under very limited circumstances. Common area or non-residential lots within residential zones, multi-family buildings, and collocated installations on existing utility towers in utility easements within passive open space zones are the only exceptions and they currently require City Council approval. The proposed ordinance: 1) maintains nearly the same prohibited locations; 2) it provides for Planning Commission review at public hearings for exceptions to location standards making access to multi-family areas easier; and 3) it provides access to low-density residential

areas within the public right-of-way. Staff does not recommend any changes to the draft ordinance.

7. Location Preferences, Installations in the Public Right-of-Way [Section 20.49.050 (C)]

Comment: Industry representatives contend that this section includes unreasonable limitations on their use of the public right-of-way. They also contend that underground vaults for support equipment are infeasible and prone to outages during rain events.

Response and Recommendation: The draft ordinance requires compliance with Title 13 (Streets and Highways) and proposed facilities must also comply with Chapter 15.32 (Undergrounding Utilities) of the Municipal Code. The City controls the time, place and manner in which the public right-of-way is accessed. Antennas can be installed on existing vertical poles (i.e. streetlights, traffic signals, or other similar structures); however, new poles within undergrounding districts may not permissible pursuant to provisions of Title 13 and Chapter 15.32 of the Municipal Code. Support equipment, with the exception of pedestal meters, may be required to be located underground in areas where existing utilities are underground and Title 13 also requires new support equipment to be placed in underground vaults whenever feasible. Staff believes that the existing provisions of Title 13 and Chapter 15.32 are consistent with State law and recommends modifying the draft ordinance to eliminate redundant and potentially conflicting provisions.

8. General Development and Design Standards [Section 20.49.060]

Comment: Industry representatives indicate that this section is burdensome and is unfair treatment of Telecom Facilities (i.e. Edison is not held to the same standard).

Response and Recommendation: The emphasis on making Telecom Facilities as inconspicuous as possible is a requirement of the Telecom Ordinance currently in effect. Telecom providers are not public utilities, and therefore, the City can apply development standards and a review process to ensure that new facilities are appropriately located and designed to be screened or otherwise inconspicuous. Staff does not recommend any changes to the draft ordinance.

9. Height [Section 20.49.060 (C)]

Comment: The telecom industry almost universally wants taller facilities to provide clearance from nearby structures and to provide wider coverage to meet the demands of their customers who visit or reside in the City. They also do not want to be subject to a Variance process if there is a need for a facility taller than allowed.

Response and Recommendation: The ordinance currently in effect allows Telecom Facilities on private property to be no taller than the upper height limit (e.g. 35 feet in the 26/35-foot height limitation zone). The City Council can authorize an additional 15 feet and without a

public hearing. The current code does not allow taller facilities as there is no Variance process.

The proposed draft ordinance would change the height requirements stated above by allowing Telecom Facilities to be 5 feet above the base height limit (e.g. 26 feet in the 26/35-foot height limitation zone + 5 feet = 31 feet). This standard treats Telecom Facilities similar to how sloped roofs, elevator shafts, and screened rooftop mechanical equipment are allowed to exceed the based height limit. Discretionary review would be required for a proposal above this standard up to the upper height limit (e.g. 35-feet in the 26/35-foot height limitation zone). A Variance, with no limitation on height, would be required for facilities to exceed the upper height limit. Staff recommends several modifications to this section to provide additional clarity, but no change to the proposed standard or process requirements

Telecom Facilities within the public right-of-way on streetlights or other structures are limited to 35 feet and antennas proposed on existing power transmission lines that are taller than 35 feet cannot be taller than the existing pole. Again, the City Council has the ability to authorize requests up to 15 additional feet. The draft ordinance does not propose to change these provisions.

10. Setback Standards [Section 20.49.060 (D)]

Comment: Industry representatives contend that the proposed "fall zone" setback is unnecessary and restrictive given compliance with building codes.

Response and Recommendation: The proposed draft ordinance includes an additional setback distance of 110% of the facility's height as a "fall zone" setback. Staff believes the additional setback is unnecessary and recommends its elimination. All required minimum zoning setbacks would apply and deviation from setbacks would be processed as a typical Modification Permit or Variance rather.

11. Screening Standards [Section 20.49.060 (F)]

Comment: Comments suggested that this section is too restrictive, partially duplicative of the definitions of antenna classes, and in need of clarification or exceptions to screening requirements when specific requirements are considered infeasible.

Response and Recommendation: This subsection provides standards for screening antennas and support equipment for the 5 proposed antenna classes. Staff recommends that this section be modified to reflect the elimination of the collocation class, creation of the public right-of-way class, and to allow a decision-maker the ability to allow exceptions when specified screening or design requirements are infeasible.

12. Permit Review Procedures [Section 20.49.070]

Comment: Concerns have been raised about burdensome review procedures and one comment questioned the elimination of specific application submittal requirements.

Response and Recommendation: This section establishes the review authority for the various antenna classes based upon location. Staff recommends this section be modified to reflect that Class 1 be administratively considered without public notice and that Class 2 be modified to only address proposed facilities within the public right-of-way. Staff also recommends that most applications be reviewed by the Zoning Administrator (with public hearings) and only those visible, freestanding structures such as monopoles or tower arrays (the most obtrusive designs) be subject to Planning Commission review (with public hearings). Additional clarification for internal consistency with other changes will be necessary. The Zoning Code provides for application submittal requirements to be established by the Community Development Director rather than by ordinance as it provides appropriate flexibility for differing application types. The current submittal requirements identified by the current ordinance will be included in an updated application.

13. License Agreements for City-Owned Property [Section 20.49.090]

Comment: Comments were raised regarding a need to streamline the process and one comment suggests there is a policy to force providers on City property to collect a fee in conflict with state law.

Response and Recommendation: A license agreement for the use of City owned structures or property is required by the current Telecom Ordinance and would remain a requirement with the proposed draft ordinance. Consideration of the license agreement is required to occur after a proposed telecom facility is approved. An applicant is required to pay a lease fee established by the City Council and the current monthly fee is \$1,500 per month. The City does not require a franchise fee in violation of State law of a public utility. Staff recommends that this section be revised to allow for concurrent processing of a telecom facility and a license agreement.

14. Modification of existing facilities [Section 20.49.100]

Comment: Concerns were raised suggesting that the proposed provisions relating to the modification of existing Telecom Facilities are too restrictive and confusing. Additionally, industry representatives claim that this section would violate federal regulations and need further clarification.

Response and Recommendation: This section is entirely new and it was drafted in response to 2012 federal regulations that require administrative review of minor changes to existing facilities. Federal law prohibits a state or local government from denying a request to modify an existing facility under particular conditions when the modification does not "substantially change the physical dimensions of a tower or base station." Federal law does not define

what change is considered "substantial" and industry representatives have indicated that 10% is an appropriate standard. Staff recommends this section be simplified for ease of use and recommends a 5% standard due to the need to review more extensive proposals to ensure that public views are protected and visual impacts are avoided.

15. Radio Frequency (RF) Emissions Reporting [Section 20.49.110]

Comment: Required reports are unnecessary and burdensome given FCC oversight. Staff also received comments regarding an industry concern about the use of RF emissions as a consideration in the review of applications.

Response and Recommendation: Compliance with FCC regulations regarding Radio Frequency (RF) emissions is mandatory and the proposed draft ordinance simply requires operators to demonstrate compliance. Demonstrating compliance should not be considered a burden as it is an industry requirement and staff does not recommend any changes to this section. The City acknowledges that RF emissions are under the jurisdiction of the FCC and considering RF emissions in the course of project review for FCC compliant facilities is precluded by federal law.

Summary

Staff recommends a series of changes to the proposed draft ordinance to reflect comments received to date. The most noteworthy change is to allow administrative review of Class 1 facilities and the elimination of the "fall zone" setback requirement. The remaining changes are intended to provide clarification and simplification. With these changes, staff believes the needs of the industry will be appropriately balanced with the desire to establish appropriate standards and public review.

Next Steps

Based upon Commission direction and public feedback, staff will prepare a revised draft ordinance that will be published well in advance of any future public hearing to allow sufficient time for review by the public, stakeholders, and the Commission.

Prepared by: Submitted by:

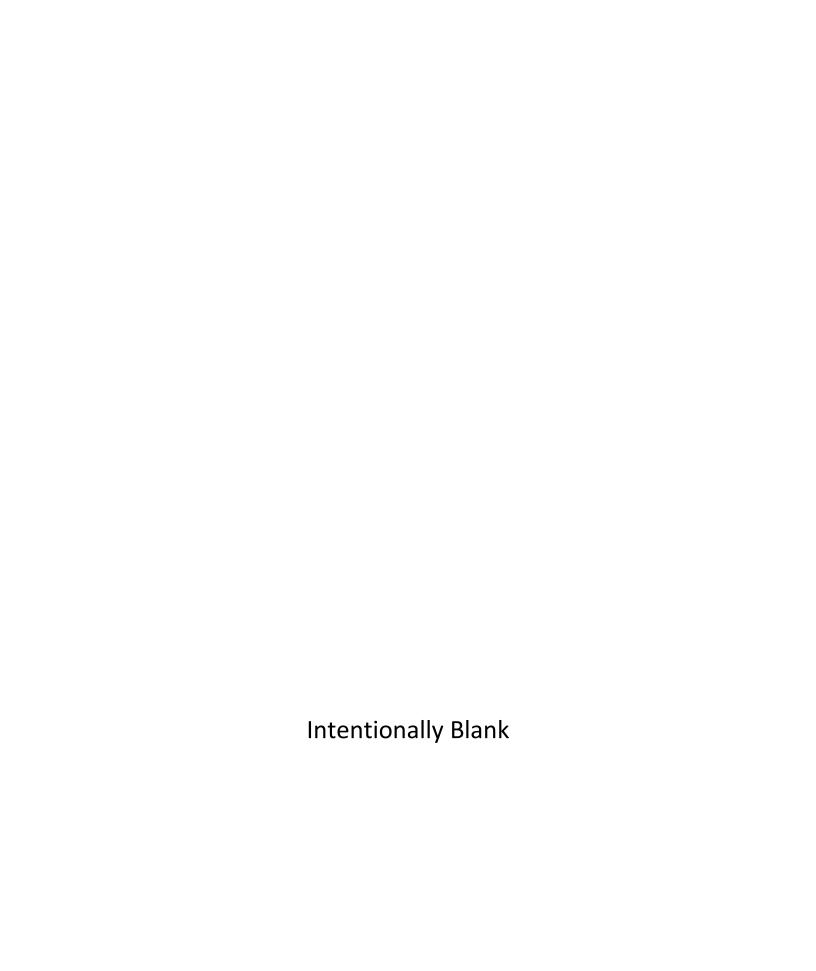
James Campbell, Principal Planner

Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Ordinance highlighted for staff recommended changes

PC 2 Comment Letters



Attachment PC-1

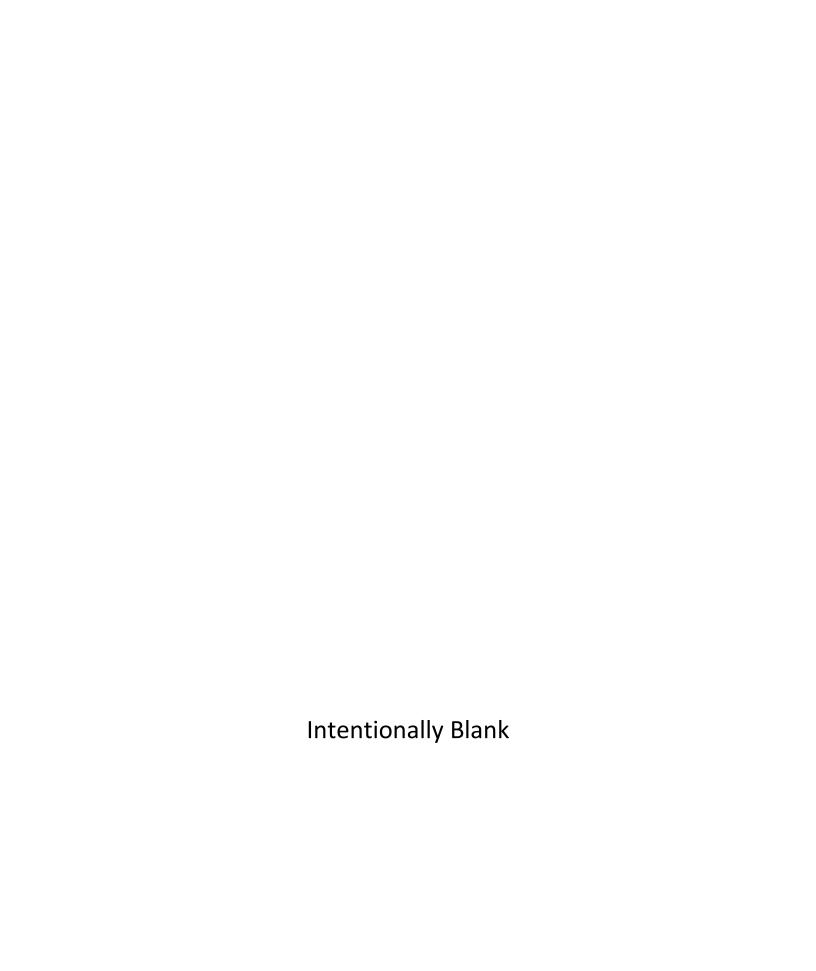


EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

Sections:

20.49.010 – Pi	urpose and Intent
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20.49.020 - General Provisions

20.49.030 - Definitions

20.49.040 - Available Technology

20.49.050 – Location Preferences

20.49.060 - General Development and Design Standards

20.49.070 - Permit Review Procedures

20.49.080 - Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 - Modification of Existing Telecom Facilities

20.49.110 - Operational and Radio Frequency Compliance and Emissions Report

20.49.120 - Right to Review or Revoke Permit

20.49.130 - Removal of Telecom Facilities

20.49.010 – Purpose and Intent.

- A. Purpose. The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:
 - 1. Encourage the location of Antennas in non-residential areas.
 - 2. Strongly encourage Collocation at new and existing Antenna sites.
 - 3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.
- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 - General Provisions.

- **A. Applicability.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.
 - 1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

Provide for some administrative approvals

- 2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- **C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
 - 1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
 - 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
 - 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
 - 4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
 - 5. Systems installed or operated at the direction of the City or its contractor.
- **D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:
 - 1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
 - 2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- **E.** Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
 - 1. All applicable City design guidelines and standards.
 - 2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.



Amortizing exiting facilities not required; clarify language

20.49.030 - Definitions.

modify and clarify as necessary to eliminate conflicts, enhance understanding, and utilization

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct "antenna classes."

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facility, Telecom Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 - Location Preferences.

Reconsider terminology

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a
 new attached structure that matches or complements the existing exterior surfaces of
 the building or structure convert Class 2 to address facilities in the public right-of way

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

- Antennas mounted inside or behind elements that replicate natural features such as
 rocks and shrubbery and located in hillsides or other natural areas where the Telecom
 Facility blends into the surrounding vegetation or topography (e.g. false rocks or
 shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

- **B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:
 - 1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
 - 2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
 - 3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

 no change in policy
- **C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:
 - 1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
 - 2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
 - 3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

D. Collocation Installations.

- 1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
- Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards. on change other than clarification

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

- 1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
- 2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
- 3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
- 4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.
- B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

revise for clarity

- C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
 - 1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
 - a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 et seq. (the "U.S. Flag Code").
 - d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
 - e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).
 - 2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.
- D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto. eliminate 110% of height setback

- E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:
 - 1. Screening elements to camouflage, disquise, or otherwise hide the Telecom Facility from view from surrounding uses.
 - 2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
 - 3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
 - 4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
 - 5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

clarify entire subsection and allow decision maker flexibility

- F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:
- 1. For Class 1 (Camouflaged/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
- 2. For Class 2 (Collocation) Antenna Installations:
 - a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
 - b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.

eliminate collocation and modify as necessary to address facilities in public tight-of-way

- 3. For Class 3 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

- Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
- c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.
- d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.
- 4. For Class 4 (Freestanding Structure) Antenna Installations:
 - a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
 - b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.
 - c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.
- 5. For Class 5 (Temporary) Antenna Installations:
 - a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

- 6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:
 - a. Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - b. Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:
 - Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
 - Shall be screened in a security enclosure consisting of walls and/or landscaping
 to effectively screen the Support Equipment at the time of installation. All wall
 and landscaping materials shall be selected so that the resulting screening will
 be visually integrated with the architecture and landscape architecture of the
 surroundings.
 - Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a "closed-mesh" design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.
 - c. Installations in a Public Right-of-Way. Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
- G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

- I. **Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.
- **J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
 - 1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
 - 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
 - 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
 - 4. All Telecom Facilities shall be kept clean and free of litter.
 - 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
 - 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

20.49.070 - Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

Table 4-1

Permit Requirements for Telecom Facilities

Antenna Class	Location of Proposed Telecom Facility		
modify to reflect changed classifications, add administrative approvals, and fewer instances where Planning Commission review is require	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

Antenna Class	Location of Proposed Telecom Facility			
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP	
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP	

- (a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.
- (b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).
- (c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.
- (d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).
- B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.
- **C. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.
- **D. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.
- E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).
- **F.** Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.

- **G. Public Notice and Public Hearing Requirements.** An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- **H. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities:
 - 1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
 - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
 - d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
 - 2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
 - a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
 - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

- A. The process for implementation or "exercising" of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on Cityowned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 - Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

- a. The Collocation of new transmission equipment;
- b. The removal of existing transmission equipment; or
- c. The replacement of existing transmission equipment

simplify entire section and maintain 5% threshold

facility and license agreement

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

- a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
- b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
- c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
- d. Increasing or decreasing by five percent (5%) or more any of the following:

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

- e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
- f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
- g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
- h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
- i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

- 1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
- 2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
- 3. A detailed description of all construction that will be performed in connection with the proposed modification; and
- 4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

no change

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 - Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 - Removal of Telecom Facilities.

- A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:
 - 1. Reactivate use of the Telecom Facility;
 - 2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
 - 3. Remove the Telecom Facility and restore the site.
- **B.** Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

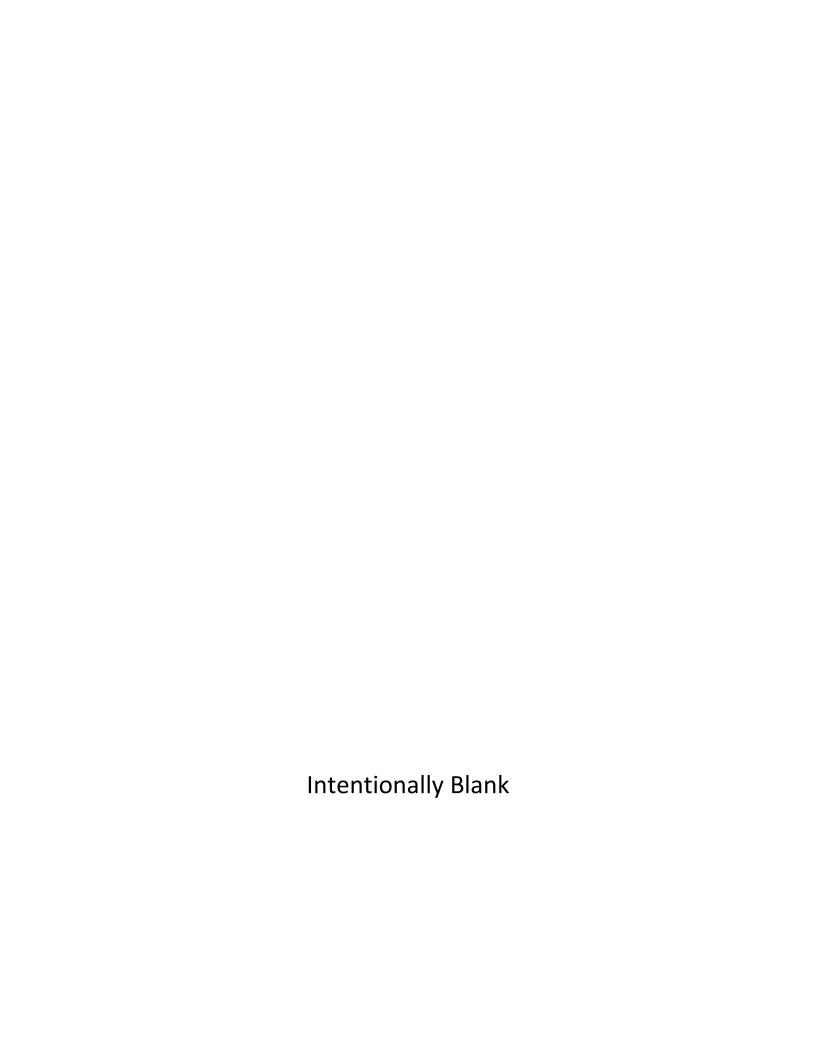
finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

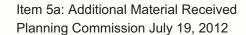
- 1. Reactivate use of the Telecom Facility:
- 2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
- 3. Remove the Telecom Facility and restore the site.

C. Removal by City.

- 1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
- 2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.
- D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

Attachment PC-2







Kyla C. Powell General Attorney AT&T Services, Inc. 1215 K Street, Suite 1800 Sacramento, CA 95814 T: 916.341.3504 F: 916.443.6836 kyla.powell@att.com

Delivered via Email

The Honorable Michael Toerge Chairman, Planning Commission City of Newport Beach 3300 Newport Blvd. Newport Beach, CA 92663

Subject: Proposed Amendment to Wireless Telecommunications Facilities Ordinance (PA2012-057), Code Amendment No. 2012-004

Dear Chairman Toerge:

AT&T appreciates the opportunity to provide comments to the Planning Commission on the proposed amendment to the City of Newport Beach's (City) Wireless Telecommunications Facilities Ordinance. AT&T has been providing communications service in Southern California for over a hundred years and its affiliate has been providing wireless telecommunications services since the late 1980's. AT&T is eager to work with the City in its efforts to address concerns about placement of wireless facilities within the City.

AT&T is most concerned about aspects of the proposed amendments that would directly impact the ability of the wireless telecommunications industry to provide service to residents, businesses and visitors in Newport Beach, who rely on cellphones and other wireless devices in their daily lives. As you are no doubt aware, the proposed amendments would affect not only cellphones, but wireless data of all kinds (including audio signals, video signals, computer files, e-mail and data of all kinds that now use wireless transmission) are affected.

Over all, we believe the proposed amendments are overly specific and restrictive and could give rise to a host of future issues and problems that may require further ordinance modifications. For example, by providing unique definitions of terms like "base station" that deviate from specific federal law definitions and is but one component of a wireless facility under 47 U.S.C.A 332, the City risks running afoul of Section 332 protections, creating a prohibition on wireless service, and having the entire ordinance preempted. We recommend that the City instead treat wireless facilities more like other facilities and not regulate them. Below, we provide the applicable law and our specific concerns.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain authority that is exclusive and which preempts conflicting acts by state or local governments. Section 332(c)(3)(7) of the Act, while recognizing that local zoning authority is preserved, requires that local regulation not "unreasonably discriminate among providers of functionally equivalent services" and not "prohibit or have the effect of prohibiting the provision of personal wireless services."

Also recently enacted at the federal level, section 6409(a) of the Middle Class Tax Relief and Job Creation Action of 2012 (47 U.S.C.A. § 1455(a)(2012)) provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." An "eligible facilities request" includes any request to modify an existing wireless tower or base station that involves collocation, removal, or replacement of transmission equipment. (Id.)

California state law also impacts placement of communication facilities within the public rights-of-way. Wireless and wireline carriers, as "telephone corporations," have access rights to the public rights-of-way under Section 7901 of the California Public Utilities Code. A telephone corporation enjoys a vested right under Section 7901 to construct "telephone lines" and "necessary fixtures" "along and upon any public road." California courts have long upheld this vested right to enter and use the public right-of-way.

In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise "reasonable control as to the time, place and manner in which roads . . . are accessed." Section 7901.1(b) provides that any municipal regulations "at a minimum, be applied to all entities in an equivalent manner," thereby imposing a duty on the City to regulate in a non-discriminatory manner.

COMMENTS

As mentioned above, some of the provisions of the proposed amendments might constitute a prohibition of services under the federal Telecommunications Act. A number of the special requirements outlined in the Proposed Ordinance relating to wireless facilities placed in the public rights-of-way also appear to go well beyond the regulation permitted under Section 7901 of the Public Utility Code. Finally, we believe the proposed amendment conflicts with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. We identify some of the problematic provisions in more detail below.

Section 20.49.030 - Definitions

Base Station – The definition provided by City for "Base Station" is too restrictive and should not exclude DAS. Alternatively, we request the City's language be modified more broadly to: "A Telecom Facility installed and operated by the Telecom Operator for signal transmission and reception." The second sentence regarding antennas and DAS should be excluded from this definition.

Wireless Tower – Only the first sentence should apply. The remaining part of this definition inappropriately narrows the meaning of a wireless tower.

Section 20.49.040 - Available Technology

We do not believe this section is relevant. It attempts to codify the choice of technology used in sites. Although it does not explicitly state various technologies, it is inappropriate for the City to dictate what technology carriers select. For example, under this section, the City could insist that AT&T use DAS or any other "efficient, diminutive, and least obtrusive available technology" as opposed to a Macro Site.

Section 20.49.050 (B) - Prohibited Locations

We do not believe the City should impose blanket prohibitions on certain locations within the City's Jurisdiction. What if the only available site is in a prohibited location? Carriers should have the

opportunity to at least attempt or work with the City to build a site at any location in the City if that is the only available means.

Section 20.49.060 – General Development and Design Standards (Also in Same Section Subsection (E)) Some of the stealthing standards and guidelines in this section and referenced in other sections may not be feasible, such as using surrounding vegetation and structures to camouflage a site. To the extent that such techniques need only be considered but are not required to be implemented, this section may be workable. However, if the City intends to mandate these guidelines and standards, that is problematic, as natural vegetation and structures can impair or block RF signals.

Section 20.49.060 (C) - Height

There are maximum height standards which may not work from an RF perspective, although we recognize that variances can be granted.

Section 20.49.060 (D) - Setback

The setback requirement for a wireless tower is 110% of the height of the tower including the antennas or enclosures. Newport Beach is a densely populated area and this setback requirement could effectively prohibit new wireless towers as this requirement may be very difficult to meet in many parts of the City.

Section 20.49.100 - Modification of Existing Telecom Facilities

This section appears to be an attempt to codify Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Under Section 6409(a) any facility modification that falls under and complies with Section 6409 must be approved by the City. Section 6409 is not discretionary. We do not believe the City should set standards and definitions that restrict or define the applicability of the Federal Statute, as it appears to do in this section. It is appropriate for the City to describe how it will comply, but it should not attempt to redefine the elements of Section 6409.

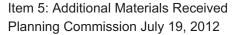
We hope the City finds these comments to the proposed amendment helpful. We welcome the opportunity to work with the City staff to discuss our legal and practical concerns and to develop solutions amenable to both AT&T and the City.

Sincerely.

Cc:

Bradley Hillgren, Vice Chair, City of Newport Beach Planning Commission Members, City of Newport Beach Planning Commission

Janet Johnson Brown, Associate Planner





Setting the new standard

Core Development Services 2749 Saturn Street Brea, CA 92821 714) 729-8404 mfelten@core.us.com

7/18/12

Janet Johnson Brown Associate Planner City of Newport Beach 3300 Newport Blvd. Newport Beach, CA 92663

Dear Ms. Brown,

On behalf of Core Communications, I would like to thank for the opportunity to provide feedback regarding the City's proposed Wireless Communications Facilities Ordinance. I commend planning staff and the City for determining that an updated ordinance is needed to allow for a uniform set of standards that each application will be subject to.

Below are our comments regarding the proposed ordinance amendment. Given our many concerns I feel it would be best if the city would continue this item to a later date to allow for an outreach meeting with the industry. I have found that a dialogue with City staff allows for the industry to understand staff's intent behind each requirement and also allows staff to understand the possible effects certain requirements may have. By understanding the goals and intent of both sides I feel that City staff will develop an ordinance that continues to achieve the City's objectives and protects the wellbeing of all those involved.

The following discussion highlights are an area of a concern:

- 1. Public Notice/Public Hearing Process and Review Authority, specifically Section 20.49.070(G): It should not necessary for all proposed projects to go through the hearing process. The City should utilize a set of objective design standards and if a carrier meets them, there should be no reason to go before any discretionary body, regardless of location. A streamlined process, such as an administrative approval, is recommended for sites that are co-located, building or roof-mounted, or located on utility infrastructures such as SCE towers. The code should explore incentives for applicants to bring forth quality proposals, such as a simplified review process. The City of Anaheim's code demonstrates this type of review, which has increased the wireless telecommunications coverage in the City and while upholding the quality of installations proposed.
- 2. Installations in the Public Right-of-Way, specifically Section 20.49.050(C): Requiring a full conditional use permit for all proposals in the public right-of-way seems overly cumbersome. If planning review is determined to be absolutely necessary, I recommended a streamlined administrative process. Public right-of-way sites are typically located on existing structures, such as light poles, therefore the aesthetic impact is minimal. I recommend only requiring specific design standards for these specific sites that the carrier will have to adhere to and if those



design standards are followed the site is approved. If it the site is unable to meet the City's design standards, then at that time the discretionary planning process may be required. For example, the City of Laguna Niguel has design standards that were adopted by the City Council. If a proposal is unable to conform to those standards then it must go through the planning process. Another example is the City of Tustin which only requires public right-of-way sites to go through an administrative design review process. Furthermore, subsection (1) requires all support equipment be placed below grade. As you may or may not be aware the industry tries to stay away from vaults at all costs. Facilities flood due to rains and the required flush-mount vents. When this occurs, sites go "off air", creating a gap in coverage, not to mention the fact that it could cost hundreds of thousands of dollars to repair even one facility. When a site goes "off air" the community will lose needed and required coverage. Additionally, some carriers' facilities often include an emergency generator which requires ventilations and specific clearance requirements that would not be able to be enclosed or vaulted. While it is understood that often Public Right-of-Way installations have very little space for equipment and vaulting may be the only option, there are occasionally circumstances where the equipment can be located above ground while being screened. Therefore, by limiting equipment to be undergrounded only, those occasions are restricted.

- 3. Design Standards and Criteria, specifically Section 20.49.060: Again, I commend the City for instituting design requirements; however, as stated above should the city institute a set of objective design standards and the carrier meets them, there should be no reason to go before any discretionary body, regardless of location. In this situation the aesthetic impacts are no longer of a concern given the facility meets code. A streamlined process, such as an administrative approval, is recommended for sites that meet the required design standards. Furthermore, the code should explore incentives for applicants to bring forth quality proposals, such as a streamlined review process.
- 4. Deviation to Height Limitations and Location Requirements, specifically Section 20.49.060(C)(1). Subsection (c) should be revisited as several schools, churches, and other public institutions are often in residentially zoned districts and typically they have flagpoles in front of their establishments. In the event there are no other options to locate antennas and equipment within a steeple, some other portion of the building, or a more appropriate stealth design; prohibiting flagpoles in residential zones may inadvertently cause a prohibition of service. In those cases where the current proposed code would allow a flagpole installation, 35' is an extremely restrictive height. As previously stated, wireless telecommunications antennas require line of site free of obstructions. Given that a great majority of buildings within the City are multiple stories and some areas of the City have topography challenges, 35' will not likely provide the necessary line of site. Therefore, it is recommended that no height limit be specified. The restriction of a 24" diameter pole is also extremely limiting. Often carriers



require at least 30" or more due to different technology and azimuth requirements. Again, it is recommended that a larger diameter measurement be provided or the size is left unspecified. Height may also be an issue in Subsection (d) having adverse implications on roof-mounted installations. The City is a beach community and often buildings are constructed to the maximum height limit. Only allowing five feet above base height limit may not be enough to allow for screening and many carriers' antenna technology. Some carriers have antennas in lengths of up to eight feet. Additionally, five feet may not be enough to meet EME safety standards depending on where on the rooftop the antennas are proposed. Therefore, it is extremely likely that majority of all rooftop installations will be greater than five feet above the base height limit requiring heightened review. This could potentially cause an architecturally integrated rooftop installation to proceed through a longer, more cumbersome process because it cannot meet the narrow five foot height limitation.

- 5. Setback Requirements, specifically Section 20.49.060(D): Wireless facilities are required to go through building plan check and demonstrate that they are structurally sound, just as any other building in the City would be required. However, no other building in the City is required to provide a "fall zone", yet the proposed wireless code amendment will require a 110% "fall zone" setback for any new ground mounted wireless facility. It is unclear why wireless telecommunications facilities would be held to a different standard. Additionally, as previously stated, wireless telecommunications antennas must have an unobstructed line of site which will often require the antennas to be much taller than the 25' example stated in the staff report. In fact, the average height of concealed ground mounted facilities will likely be around 55', to allow for a 45' centerline of antennas and additional camouflaging above the antennas. Therefore, if a 55' ground-mounted facility were proposed the 110% setback would be 60.5'from all properties lines, which would likely inadvertently prohibit any ground-mounted wireless facilities on the majority of properties within the City.
- 6. Modification of Existing Telecom Facilities: Given the recent "Tax Relief Act" legislation, I recommend the City handle all modification requests as ministerial permits. Limiting any change to 5% or less, as the current ordinance amendment proposes, may potentially prohibit any maintenance or equipment changes/additions that will increase the efficiency or technology of the facility.
- 7. Zoning District Land Uses and Permit Requirements: The City should not prohibit a wireless installation in any zone. This opens the possibility of the City prohibiting telecommunications services. Prohibiting an installation outright in any zone may cause the City to unknowingly create a barrier to entry which inadvertently regulates the business affairs of a wireless company. This is likely not the intention of the City and therefore I recommend that the City adopt specific design standards for the residential and open space zones to protect the integrity of the area. Also, many properties may be zoned residential, but are not used for residential



purposes, which should be taken into consideration. It should be noted that many cities have found having wireless facilities in their parks zoned either residential or open space has created an avenue of revenue for the City.

The entire ordinance is quite lengthy, somewhat burdensome and may provide a barrier for wireless services to be provided to the Newport Beach community. Given the concerns explained in the text above, I feel it would be best if the City would continue this item to a later date to allow for an outreach meeting with the industry. I would like to thank the City for notifying us of this proposed amendment and look forward to working together in crafting a lawful ordinance that protects the residents and businesses of the City of Newport Beach along with operation of the wireless industry.

Yours truly,

Michelle Felten

Senior Project Manager

Michelle Felten

Newport Beach Wireless Ordinance (July 19, 2012 Version)

The following comments are on the version of the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 presented to the Newport Beach Planning Commission as Agenda Item 5 at its July 19, 2012 meeting.

The comments were prepared by Jim Mosher (<u>jimmosher@yahoo.com</u>), 2210 Private Road, Newport Beach 92660 (949-548-6229), and are a mix of what may seem major and minor points.

Disclosure

I live in a blufftop home on a "quiet" street overlooking Irvine Avenue, just north of Santiago Road. I enjoy a view across the Upper Newport Bay Nature Reserve to Saddleback Peak in the distance. The only unnatural object impairing my view is the top of a City-owned streetlight pole in the public right-of-way along Irvine Avenue. In March 2007 the City Planning Department (now Division) approved, without public notice, hearing or right of appeal, an application to attach a pair of highly visible commercial cell antennas to the top of that pole. In November, 2008, without an clear authority from the City Council, the City Manager signed a long-term lease for use of the City-owned pole, and in January, 2009 impacted residents were notified of imminent construction by a contractor (which, to date, has not yet happened). Adding insult to injury, this has been designated as a preferred site for future collocation.

As it turns out the application was approved based on fraudulent information submitted by the applicant including maps which by failing to disclose a major wireless facility two blocks to the north created the appearance of a major "hole" in coverage where none existed. As it also turns out, under the existing telecom code the planner who approved the application should arguably have referred the matter to a noticed public hearing before the City Council because of the proposal's greater-than-normal impact on private views. In addition, the letting of a lease by the City Manager, although consistent with the Council Policy, was, at least in my view, inconsistent with the City Charter, which permits *only* the City Council to bind the City (an action which to comply with the Brown Act would have to take place at a noticed public meeting). Finally, there is an ongoing disagreement as to whether the approval was granted in perpetuity (the Planning Division's interpretation), or if as an unexercised building permit issued subject to the Uniform Building Code it expired (in the absence of any construction) 180 days after issuance (my interpretation).

My neighbors and I expect no relief from the proposed Wireless Telecommunications Facilities Ordinance since it says it does not affect the status of earlier approvals. Nonetheless this example seems to me a paradigm of at least one situation in which a good telecom code would preclude the issuance of a permit: cell equipment should not be sited where it impairs the enjoyment of public or private property unless there is compelling evidence of a serious gap in coverage that cannot be corrected in any less intrusive manner.

Although I appreciate staff's effort in "updating" the code, to the extent the new code would permit the preceding facility to be approved I will find it wanting.

General Comments

The effort to update the City's wireless regulations and integrate them into the Zoning Code is very commendable, particularly to the extent it brings them under the umbrella of uniform hearing and appeal procedures applicable to other zoning/land use decisions.

That said, it seems unfortunate that the City's Media and Communications Committee no longer exists, for this is potentially a major revision that would have seemed deserving of more public outreach and input before reaching so finalized a state. Although I cannot guarantee they would have participated, I personally know of others who have not been entirely happy with the current process.

Where do the revised regulations belong?

The choice of numbering the commercial wireless regulations as "Chapter 20.49" appears to place them in Title 20 (Zoning Code) under Part 4 (Standards for Specific Land Uses). However that part currently contains only a single chapter (Chapter 20.48: Standards for Specific Land Uses), and "Wireless Telecommunications Facilities" would seem logically to be a section under that, much like Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities). The primary reason for not doing so seems to be that the use of a combination of letters and numbers to designate the subsections within a section is more awkward than the decimal scheme of numbering sections within a chapter. Yet a standalone chapter looks out of place when all the other "Specific Land Uses" are sections within a single chapter.

Alternatively the commercial wireless regulations might belong as a separate chapter in Part 3 (Site Planning and Development Standards), much like Chapter 20.36 (Landscaping Standards) or Chapter 20.42 (Sign Standards). Since those chapters are arranged alphabetically, "Wireless Telecommunications Facilities" would be Chapter 20.47.

The proposed transplanting of the section of wireless-specific definitions from Title 15 to Title 20 as Section 20.49.030 (Definitions) is also awkward, for an effort was made to consolidate *all* the definitions in the new Zoning Code in a single section: Chapter 20.70 (Definitions). Although an exception has already been made in Chapter 20.42 (Sign Standards) – which has its own definition section – consideration should perhaps be given to including a dedicated section of wireless definitions in the "W" section of Chapter 20.70, rather than as a separate section within the Wireless code where they are disconnected from the other zoning definitions.

Specific Comments

20.49.010 – Purpose and Intent.

Minor comments:

- Since the regulations of the California Public Utilities Commission also come into play, the phrase in paragraph "A. Purpose" that says "consistent with federal law" should perhaps say "consistent with state and federal law."
- The capitalization of words in the proposed ordinance is not entirely consistent with the style used in the remainder of the current Zoning Code, although the latter itself has many inconsistencies. "State" and "Federal" should perhaps be capitalized. Words like "Antenna" and "Collocation" should perhaps not be, since defined terms are not generally capitalized in most of the rest of the Zoning Code.

Major comment:

- Paragraph "A. Purpose" differs from the existing code by a single word, yet despite the claim in Attachment PC2 that there is "No policy change," this is in fact a major policy change. The word "public" has been inserted into the phrase "protecting scenic, ocean and coastal public views." Although staff has consistently claimed its presence was implied, it was not there, and the idea that its presence was implied is contradicted by existing Section 15.70.070 (Permit Review Procedures) where:
 - 1. under paragraph B.4 (Visual Simulations) it says "Consideration shall be given to views from both public areas and private residences." and
 - 2. under paragraph F.3.b (Special Review by Council) a required finding for approval by the Council is that "The approved facility will not result in conditions which are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety."
 - In addition, Section 15.70.090 reserved to the City the modify or revoke the permit if changed circumstances resulted in "Additional impairment of the views from surrounding properties."
 - Likewise, the issuance of a permit for construction in the public right-or-way under NBMC 13.20.070 (Issuance of a PROW Permit) requires consideration of the adverse aesthetic effects of any above ground facilities.
 - It is clear, then, that an objective of the existing telecom code is the minimization of impacts on private as well as public views a commitment that is abandoned, to the detriment of the community, in the proposed revision.

20.49.020 - General Provisions.

Minor comment: in the old Section 15.70.020 the lettered sections were arranged alphabetically. It is unclear if the new arrangement has a better logic to it.

- B. Permit and/or Agreement Required.
 - o This section seems redundant with Sections 20.49.070 and 20.49.090, to which it refers. For example, Section 20.49.070.A. (Permit Required) restates the

requirements, and stating them in two places seems unwise: at best the statements are consistent, at worst they contradict each other.

• C. Exempt Facilities.

- Paragraph 2 seems to refer to a subset of the items that are, or should be, regulated by the code section referred to in paragraph 1.
- The reference in paragraph 3 seems to be to Chapter 2.20 of the NMBC, rather than to Title 2 in general (most of which doesn't have to do with emergencies).

• D. Other Regulations.

- Does "Notwithstanding" mean the same as "In addition to"?
- Three numbered clauses in the existing Section 15.70.020.D have been removed. Two of them are probably subsumed in the new "E. Regulations not in Conflict or Preempted," but the reasons for no longer requiring compliance with "3. Easements, covenants, conditions or restrictions on the underlying real property" are less obvious. The City has a reluctance to enforce covenants as expressed in Chapter 20.10.C.1, but that reluctance to check compatibility should not necessarily apply to wireless proposals, where the applicant is rarely the landowner.

20.49.030 – Definitions.

General comments:

- Again, the wireless-related definitions might more logically be placed in the "W" section of Chapter 20.70 (Definitions). The City of Riverside does this nicely in Section 19.910.240 of their Municipal Code where they have a subsection of "W" devoted to "Wireless telecommunication facilities" with the header explaining, among other things, "The following definitions pertain to the regulation of telecommunications uses." They have also, unlike Newport Beach, inserted their sign-specific definitions in the "S" section with entries such as "Sign, spandrel."
- Many rather poor definitions have been copied over from the existing wireless code.
 Many other ones really could be cleaned up.

Specific comments:

Antenna.

- This definition is confused and circular, with "antenna" being included as an example of an antenna.
- o It seems, intentionally or not, to include the handheld cell phone at the consumer end of the transaction.

 "Electromagnetic waves" includes light as well as radio- or microwave-frequency emissions, so the definition would seem to include, probably inadvertently, such things as a laser surveying system, or even an ordinary light.

Some examples from other cities:

- "Antenna, Antenna Array, Wireless Antenna Array, or Wireless Telecommunications Antenna Array." One or more rods, poles, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, that may include omni-directional antennas (whip), directional antennas (panel), and parabolic antennas (disc), but excluding any support structure as defined below.
- "Antennas" Any system of wires, poles, rods, reflecting discs, dishes, flat panels, or similar devices, including "whip antennas", attached to a telecommunications tower, mast or other structure, which in combination with the radio-frequency radiation generating equipment associated with a base station are used for the transmission or reception of electromagnetic waves.
- 1." Antenna" means a device or system of wires, poles, rods, dishes or other devices of similar function, used for the transmission and/or reception of radio frequency signals for wireless communications, as described in the Telecommunications Act of 1996. It may include an omni-directional antenna ("whip"), a directional antenna ("panel") and parabolic antenna ("disc"). It does not include the support structure. 2. "Antenna Array" means a set of one or more antennae.

Antenna Array.

 This is a particularly inscrutable definition constructed out of inscrutable phrases, especially since our definition of "antenna" includes "arrays." The very concise definition of "Antenna Array" in "2" above seems better.

Antenna Classes

- As it stands this seems a purely circular definition.
- A reference to proposed Section 20.49.050.A (where the "classes" are actually defined) would seem helpful.

Distributed Antenna System, DAS.

 I thought a DAS was a system of small, low-power, closely spaced antenna stations. Does the reference to "third-party" mean it does not qualify as a DAS if it is built and operated solely for the benefit of the installer?

• Feasible.

Should the definition include economic factors?

Stealth or Stealth Facility.

False trees have been deleted, probably intentionally.

Utility Tower.

o It is unclear why a steel pole is regarded as a "tower." Why would the material matter?

Wireless Tower.

The intent of the reference to DAS is unclear. In the example, does it matter if the antenna added is DAS or some other kind?

20.49.040 - Available Technology.

• It was unclear under the old code, and remains unclear why this clause is not included in Section 20.49.020 (General Provisions).

20.49.050 - Location Preferences

• A. Preferred Locations

Class 2 (Collocation)

- It is unclear why the spelling "co-located" is used in preference to "collocated."
- My reading of this definition is that a completely unscreened facility is Class 2 provided the facility to which new features are added was originally unscreened. It is unclear why this would be a preferred over more numerous but less visible installations.
- Reading further through the code I'm not sure "collocation" should be a "class" at all. In other parts it sounds like it is a construction technique that could be applied to any one of the other classes.

Class 3 (Visible)

• "a cylindrical Antenna unit that replicates the diameter and color of the pole or standards" sounds like it might be Class 1, certainly if it was incorporated into the normal length of the pole.

Class 4 (Freestanding Structure)

 This class seems to encompass a wide range of structures, some of which are much more obtrusive than others.

Class 5 (Temporary)

 The meaning of "such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040" is less than clear since Telecom Facilities are not mentioned in Section 20.52.040. Does this mean that even though not mentioned there, the procedures of Section 20.52.040 with a time limit of less than 1 year?

C. Installations in the Public Right-of-Way.

- "Any pedestal meter required for the purpose of providing electrical service power."
 - Has this exception been made obsolete by Southern California Edison's conversion to "SmartMeters" which do not need to be physically read by a technician?
- "Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations."
 - Isn't this redundant with the catch-all clauses in Section 20.49.020 (General Provisions, paragraphs D and E)?

D. Collocation Installations

o In my view this section should be discretionary rather than mandatory. That is, it should say "*may* be required to collocate" rather than "*shall* be required to collocate." There is no one-size-fits all solution. Ideally the desirability of collocation versus separate installations should be worked out during the public hearing, but the decision has to be made early in the approval process.

Condition Requiring Future Collocation

• If the preceding section is mandatory, this seems redundant with it – that is *all* approvals would implicitly include this condition.

20.49.060 - General Development and Design Standards.

• A. General Criteria.

- "For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight."
 - It is unclear if this is meant as a definition or a design directive.

- The definition of "Wireless Tower" in Section 20.49.030 implies no size or amount of antennae can ever cause a streetlight to become a wireless tower?
- Does this mean there *is* some threshold at which that would happen, and it is to be avoided?
- If so, should it be elaborated in one of the listed standards? Or is it already implied in "Blending"?
- Apparently this is meant to be read similarly to the explanation of Screening Standards in paragraph 20.49.060.F.3.c ("compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted") but the tie-in is not immediately obvious to me.

• B. Public View Protection.

- As previously indicated this is a major step back from the present code which
 protects both private and public views, and not just from the few (and somewhat
 arbitrarily located) starred spots on the General Plan map.
- Although the Zoning Code generally shuns private view protection it is not unprecedented. For example commercial loading docks and roof-mounted equipment are supposed to be screened from view from adjacent residences.
 And more importantly, the telecom applicant is not normally a landowner restricted to construction on a particular parcel of property

• C. Height

The reminders about other codes (such as Section 20.30.060.E and 4 U.S.C. §
 1) are helpful, but probably redundant with the catch-all applicability of all other codes in Section 20.49.020 (General Provisions).

Maximum Height.

- Since the definition of Telecom Facilities in Section 20.49.030 includes
 the whole shebang (including the antennas, the support structure to which
 they are attached and even the land on which it sits) the reference to
 "Telecom Facilities" at the start of each lettered paragraph is at best
 confusing. I think what is being regulated is the height at which antennas
 (rather than Telecom Facilities) can be installed.
- Lettered paragraph "b" may need some words to clarify how it relates to paragraph "a" which it is possibly meant to supersede?

• The references to 24 and 20 inches in lettered paragraph "c" are less than clear. They seem to be an attempt to describe the flagpole rather than the "facility," and I'm not sure how "at the top" is to be interpreted. My recollection is cellphone "flagpoles" frequently have an enlarged cylindrical section near the top (housing the antennas) with a small decorative element above that.

Over-Height Buildings or Structures

 Stealth Telecom Facilities can evidently be of Class 1, 2 or 4? Exactly how that and "the type of installation" are to affect the review seems vague.

D. Setbacks

• The reference to "installed on public property or private property" seems unnecessary. What other kinds of property are there?

E. Design Techniques.

 This subsection may have absorbed the protections of private views in the existing code, but whether it is intended to include consideration of private views or not is unclear.

F. Screening Standards.

- Class 3:
 - "No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas."
 - This sounds good, but may be unrealistic. I don't recall ever seeing an installation with visible antenna panels in which the mounting brackets and cables were not at least partially visible.
 - "Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible.."
 - Large canisters and "radomes" added on top of streetlights and other poles are not necessarily less obtrusive or obnoxious than "exposed" antennas mounted flush to the pole. It is not at all obvious why they would be preferred.

20.49.070 - Permit Review Procedures.

- A. Permit Required.
 - o "Table 4-1 Permit Requirements for Telecom Facilities"
 - The index to the existing Zoning Code indicates Title 20 already contains a "Table 4-1 Animal-Keeping Standards" and a "Table 4-2 Required Setbacks for Structures Housing Domestic Farm Animals." It would appear that if the proposed code is placed in Part 4 this table will need to be renumbered.
 - Note "a" where it says "depending on the type of installation and Antenna Class being proposed for the Collocation" is confusing. I thought a collocated installation was by definition Class 2.
- B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.
 - It should be clearly stated that authorization by the written authorization from the City Manager does not guarantee that a lease for use of the property will ultimately be granted by the City Council.
- H. Required Findings for Telecom Facilities
 - 1. General.
 - The term "review authority" is used frequently in the proposed code. This seems to be where it is defined. However it is defined by reference to Table 4-1, and that table is less than clear as to who or what the review authority is in most cases.
 - The proposed findings are substantially different from the ones the City Council would currently have to make under Section 15.70.070.F.3.
 - The basic requirement that the facility is needed to provide service seems to be missing. Such a requirement is permitted by case law and needed to prevent an unnecessary proliferation of facilities.
 - The proposed findings seem to preclude placement in parks or on public facilities, since such an application would have to be denied if any other alternative is feasible. Since the City might want the revenue in preference to installation on a nearby private building, the logic behind this is unclear.

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property

Although outside the scope of the proposed code, I believe, as previously stated, that there is a problem with the procedure of approving the leases formulated by the City Manager and City

Attorney for commercial use of public property as current described in Council Policy L-23 (The Siting of Wireless Telecommunications Equipment on City- Owned Land). The agreement is "approved" by *lack of action* on the part of the City Council, which I believe is inconsistent with both the City Charter and the Brown Act. In addition Policy L-23 will require revision because it currently refers to Chapter 15.70 (which is proposed to be repealed) and to provisions in Title 13 that were never implemented.

20.49.100 – Modification of Existing Telecom Facilities.

The reference under the definition of "Substantially change" to February 22, 2012 seems oddly stated, and might seem to have the effect of making the following criteria inapplicable to a facility that did not exist on that date?

20.49.120 – Right to Review or Revoke Permit.

 The transplanting of this section from Section 15.70.090 does not seem to have been entirely successful since it no longer explains all the circumstances under which the City reserves the right to review or revoke the permit.

20.49.130 - Removal of Telecom Facilities.

- B. Abandonment.
 - I have no problem with reducing the period from 180 days to 90 days, but the reason for doing this is not explained in the staff report.

Omissions

In addition to lack of clarity regarding the minimization of impacts on private properties, the proposed code omits important *Submission Requirements* currently found in Section 15.70.070. These included the justification for the project, maps (including ones illustrating current and proposed coverage), visual simulations (including ones showing impacts on nearby residences), emission data, wind load calculations and evidence of permission to use property. I don't know if some of this may be required for use permits in general, but much of it seems wireless-specific and it is very difficult to see how the reviewing authorities could make an intelligent decision about the application without this information.

Finally, I think the proposed code would benefit from comparison with how wireless applications are handled by other California cities. I suspect that beyond the clearer definitions cited above, there are many concepts and specific provisions that could be usefully incorporated.



Item 5c: Additional Material Received Planning Commission July 19, 2012 PA2012-057



July 19, 2012

VIA ELECTRONIC MAIL

Newport Beach Planning Commission c/o Janet Johnson Brown, Associate Planner City of Newport Beach 3300 Newport Blvd. Newport Beach, CA 92663 jbrown@newportbeachca.gov

Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association ("PCIA")¹ and the California Wireless Association ("CalWA")² writes to provide comment on the City of Newport Beach's proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach's efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

¹PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

²CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.





Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

The Need for Wireless Infrastructure

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years³ and a projected growth of eighteen times current levels of mobile data traffic in the next five years.⁴ Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.⁵ This will result in two billion networked mobile devices by 2015.⁶

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device. The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

[T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

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³ Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* http://mobilefuture.org/page/-/images/2011-MYIR.pdf.

⁴ Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile-video/.

⁵ Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile- internet-users-to-outnumber-wireline-users-by- 2015/2011/09/12/gIQAkZP7MK_blog.html?wprss=post-tech.

⁶ Mobile Future, 2011 Mobile Year In Review.

⁷ FCC.gov, Guide: Wireless 911 Services, *available at* http://www.fcc.gov/guides/wireless-911-services.





increasingly rely upon their personal wireless service devices as their primary method of communication.⁸

As NENA observes:

Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point ("PSAP") and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers. 9

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected "to any but the generally applicable time frames for zoning decision[s]." Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a "local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that "a 'reasonable period of time' is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications." Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC's presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

⁸ Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) ("Shot Clock Ruling"), recon. denied, 25 FCC Rcd 11157 (2010), aff'd, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

⁹ Shot Clock Ruling, at 36.

¹⁰ H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

¹¹ Shotclock Ruling.





exempt from $CEQA^{12}$ or a negative declaration or mitigated negative declaration has been adopted. 13

The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise \$15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to "eligible facilities requests" for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." 14

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¹²Gov. Code § 65950(a)(4).

¹³Gov. Code § 65950(a)(3).

¹⁴Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). See also Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, 24





The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. ¹⁵

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities. He while the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a "base station" as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service." We urge the Planning Commission to use these well recognized definitions within its Ordinance.

FCC Rcd 13994, 14021 1171 (2009) ("Shot Clock Ruling"), recon. denied, 25 FCC Rcd 11157 (2010), aff'd, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

¹⁵Collocation Agreement, note, above.

^{16&}lt;sub>Ld</sub>

I'd.

¹⁷See, e.g., 47 C.F.R. §§24.5, 90.7.





Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,	
/s/	/s/
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EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

Sections:

20.49.010 – Purpose and Intent

20.49.020 - General Provisions

20.49.030 - Definitions

20.49.040 - Available Technology

20.49.050 – Location Preferences

20.49.060 – General Development and Design Standards

20.49.070 - Permit Review Procedures

20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 – Modification of Existing Telecom Facilities

20.49.110 – Operational and Radio Frequency Compliance and Emission's Report

20.49.120 - Right to Review or Revoke Permit

20.49.130 - Removal of Telecom Facilities

20.49.010 – Purpose and Intent.

- A. Purpose. The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:
 - 1. Encourage the location of Antennas in non-residential areas.
 - 2. Strongly encourage Collocation at new and existing Antenna sites.
 - 3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.
- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 - General Provisions.

- **A. Applicability.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

CalWA Comment No. 1: Some recognition that this land use is in fact a "utility" (as defined in the States Constitution) and additional tolerance and balance similarly to how other utilities are viewed aesthetically should be afforded this critical land use as well. This "purpose" raises aesthetics above all other considerations unfairly as compared to other utility land uses.

- 2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- **C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
 - 1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
 - 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
 - 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
 - 4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
 - 5. Systems installed or operated at the direction of the City or its contractor.
- **D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:
 - 1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
 - 2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- **E.** Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
 - 1. All applicable City design guidelines and standards.
 - 2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 - Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct "antenna classes."

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facility, Telecom Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

CalWA Comment No. 6: Overemphasis of "aesthetics". More tolerance and balance should be afforded this land use in recognition of the critical infrastructure and "utility" that it is.

20.49.040 - Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

CalWA Comment
No. 7: This
additional
requirement is
not warranted
nor relavent to a
Collocation.
Please remove.

CalWA Comment No. 8: WTF mounted on existing utility infrastructure should be encourage and promoted via Class 1 designation.

CalWA Comment No. 9: This type of facility should be Class 1. Please reclassify as a facility that is within a rock or shrub type facility is very low profile and minimimally visible, if at all.

CalWA
Comment No.
10: These
types of
facilities should
be included
with Class 3
type facilities
as they are
"stealthed/
camoflauged
and should be
incentivised.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
 - A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

- **B.** Prohibited Locations. Telecom Facilities are prohibited in the following locations:
 - ➤1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
 - 2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
 - 3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.
- **C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:
 - 1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
 - 2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
 - 3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

CalWA
Comment No.
11: Facilities
should be
permitted in
these zones if
not utilized as
a residential
use.

CalWA
Comment No.
12: Open
space should
be a permitted
zone for this
critical utility
infrastructure.

CalWA Comment No. 13: The "General Criteria" primarily focuses on "aesthetics" and weights that criteria above all other concerns. No other utility infrastructure must adhere to such unbalanced criteria and wireless infrastructure. CalWA requests that the City begin to look in a more balanced and tolerant manner towards this utility as is afforded all other utility infrastructure.

D. Collocation Installations.

- 1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
- 2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

- 1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
- 2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
- 3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
- 4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.
- **B.** Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

- C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
 - 1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
 - a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 et seq. (the "U.S. Flag Code").
 - d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
 - e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).
 - 2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.
- D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

- CalWA Comment No. 14: These types of facilities should be permitted in residential districts that are developed non-residential land uses.
- CalWA Comment No. 15: Additional heights should be permitted up to 10 feet above the base height as additional height could result in lesser overall facilities and will allow for additional collocations further reducing the number of overall facilities needed in the future.

CalWA Comment No. 17: This land use is by definition a "utility". As critical "utility infrastructure" some tolerance of "aesthetics" associated with utility infrastructure needs to considered and afforded this land use as it is afforded other "utilities". Over emphasis of "aesthetics".

CalWA Comment No. 16: This is unecessary and could exclude many good opportunities for appropriate locations. This requirement should be removed.

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

- **E. Design Techniques.** Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:
 - 1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
 - 2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
 - 3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
 - 4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
 - 5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.
- **F. Screening Standards.** Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:
- 1. For Class 1 (Camouflaged/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
- Please clarify. 2. For Class 2 (Collocation) Antenna Installations:
 - a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
 - b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.
 - 3. For Class 3 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

CalWA Comment No. 17: How is this section anticipated to be applied? Wholesale change out of the WTF would not be acceptable. CalWA Comment No. 18A: The requirement for locating associated radio transmission/amplificaton equipment inside the streetlight pole or traffic control standard "without increasing the pole width or shall be mounted in a flush-to-grad enclosure adjacent to the base of the pole" is onerous and cost prohibitive. It is also unequitable treatment when compared to other utility infrastructure within the ROW. We request an option for above ground equipment be available.

Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
- c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.
- d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.

Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

CalWA Comment No. 19: This should be a Class 1 type facility

CalWA

additional

of facility

should be

Class 1.

screening is

done this type

Comment No. 18: If this

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
 - The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.

- 5. For Class 5 (Temporary) Antenna Installations:
 - a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

CalWA Comment No. 20: In industrial/manufacturing zones this design option is appropriate and helps reduce costs of facilities for all. Also in proximity to transmission lattice tower similar lattice tower designs are most appropriate. C.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:

CalWA Comment No. 22: This is not a feasible option. Should be removed.

- a. Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the leview authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
- b. Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:
 - Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
 - Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
 - Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a "closed-mesh" design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.

It is not feasible to provide above ground support equipment within the pole without some reasonable increase in width being permitted. This section should be redrafted.

CalWA Comment No. 23:

- c. Installations in a Public Right-of-Way. Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
- **G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

- I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.
- **J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
- CalWA Comment
 No. 25: For those
 facilities that are
 not visible and not
 within a residential
 zone nor within
 150' of a
 residential zone a
 ministerial permit
 option to
 incentivize and
 reduce processing

costs and time

should be an

option.

- 1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
- 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
- within a residential 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
 - 4. All Telecom Facilities shall be kept clean and free of litter.
 - 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
 - 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

20.49.070 - Permit Review Procedures.

CalWA Comment No. 24: More incentivized zoning principles should be incorporated into the "Permit Review Procedures".

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

Table 4-1
Permit Requirements for Telecom Facilities

Permit Requirements for Telecom Facilities					
Antenna Class	Location of Proposed Telecom Facility				
CalWA Comment No. 25: For Nonresidential there should be a lesser ministerial process to further insentivize the nonresidential locations.	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District CalWA Com 26: No Colle should required.	ocati	
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP		
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP		
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP		

CalWA Comment No. 27: Should be allowed via MUP if within height limits of underlying zone and "stealthed".

CalWA Comment No. 28: For WTF located in Residential Zones with non-residential land uses, a MUP or ministerial permit should be afforded if completely screened.

CalWA Comment No. 29: Is this for emergency facilities? Not clear.

Antenna Class	Losation of Proposed Telecom Facility			
Class 4 Antenna (a) (c)	MUP	CUP	CUP	
(Freestanding Structure)				
Class 5 Antenna (a) (c) (d)	LTP	LTP	LTP	
(Temporary)				

CalWA Comment No. 30: Has the City conducted Environmental Reviews on wireless facilities as a matter of routine or are most facilities determined to be "Exempt" from the provisions of **CEQA** (Categorically).

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.

- (b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).
- (c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.
- (d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

limitation? This B. Application Submission Requirements for Telecom Facilities on City-owned or City

C. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

churches which **D. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

CalWA Comment No. 31: What is the purpose of this excludes numerous appropriate land use locations that are zoned residential but may have other land uses, ie. provide excellent locations in proximity to residential uses E. where these

facilities are

extremely

necessary.

CalWA Comment No. 32: Has it been the practice to conduct Environmental Reviews pursuant to CEQA for facilities in Newport Beach? If so then would this State Code section be invoked? CalWA Comment No. 33: This requirement is inconsistent with State and Federal Collocation laws. Some recognition of the Class 1 type facility and collocations should be included herein. Also further incentivization of process would be the ministerial permit for Class 1 and collocations that are consistent with State Code section, 65850.6.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.

- **G. Public Notice and Public Hearing Requirements.** An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:
 - 1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
 - The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
 - d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
 - 2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
 - a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
 - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.
- being required 20.49.080 Permit Implementation, Time Limits, Extensions, and Appeals.
 - A. The process for implementation or "exercising" of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
 - B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

CalWA Comment
No. 34: These
criteria are
extremely
subjective and do
not consider the
technical
requirements of
the land use.
These criteria are
unbalanced with
overemphasis on

"aesthetics".

CalWA Comment No. 35: Additional height should be permitted as required. An addiitonal 5' only is too onerous and will result in many more facilties

20.49.090 - Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on Cityowned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 - Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

- a. The Collocation of new transmission equipment;
- b. The removal of existing transmission equipment; or
- c. The replacement of existing transmission equipment

CalWA Comment No. 37: What is an example of a "Telecom Facility that does not qualify as a Wireless Tower or Base Station". Needs clarification.

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

- a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
- b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
- c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
- d. Increasing or decreasing by five percent (5%) or more any of the following:

CalWA Comment No. 38: Nearly any additional facilities incorporated onto an existing facility could be interpreted to "make the Wireless Tower more visible". This needs to be clarified and relaxed to accommodate collocations without being determined to crossing this "threshold".

CaWA Comment No. 39: This threshold is vague and unclear. Delete or clarify.

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CalWA Comment No. 41: These additional constraints are confusing and unclear. Delete or clarify. A simple 10% increase in volume is simple enough.

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

- e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
- f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
- g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
- h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
- i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

- 1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
- 2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
- 3. A detailed description of all construction that will be performed in connection with the proposed modification; and
- 4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

CalWA Comment No. 42: CalWA has worked with jurisdictions across the State. It is our experience that when additional testing is required it is so far below allowable limits as set by the FCC that is to be unwarranted. Please delete this requirement as it adds additional burdens and expenses that do not yeild meaningful information.

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 - Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 - Removal of Telecom Facilities.

- A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:
 - 1. Reactivate use of the Telecom Facility;
 - 2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
 - 3. Remove the Telecom Facility and restore the site.
- **B.** Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

- 1. Reactivate use of the Telecom Facility;
- 2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
- 3. Remove the Telecom Facility and restore the site.

C. Removal by City.

- 1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
- 2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.
- D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

Crown Castle

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August 28, 2012

VIA U.S. MAIL AND E-MAIL

Janet Johnson Brown, Associate Planner City of Newport Beach 3300 Newport Blvd. Newport Beach, CA 92663

Re: <u>City of Newport Beach Wireless Telecommunications Facilities Ordinance (City of Newport Beach Municipal Code</u>, § 20.49.010, et seq.)

Dear Ms. Brown:

Crown Castle hereby submits its comments on the proposed amendments to the City of Newport Beach ("City") Wireless Telecommunications Facilities Ordinance (Newport Beach Municipal Code ("NBMC"), § 20.49.010. et seq.) ("Wireless Ordinance").

Crown Castle requests that the City reject the proposed Wireless Ordinance in its current form, and work with industry representatives to craft a revised ordinance consistent with state and federal law.

1. Introduction.

The California Public Utility Commission has issued to Crown Castle a "certificate of public convenience and necessity which identifies the company as a telephone corporation under California law and more specifically as a "competitive local exchange carrier" ("CLEC") and a "public utility." Telephone corporations have a special status under state law (see, e.g., Pub. Util. Code § 216.) and are authorized to "erect poles, posts, piers, or abutments" in the public right of way ("ROW") subject only to local municipal control over the "time, place and manner" of access to the ROW. (Id. at §§ 1001, 7901; 7901.1; see Williams Communication v. City of Riverside (2003) 114 Cal.App. 4th 642, 648 [upon obtaining a CPCN, a telephone corporation has "the right to use the public highways to install [its] facilities."].)

Crown Castle develops wireless telecommunications infrastructure in the ROW. Its systems, known as "distributed antenna systems," or "DAS," consist of several small-scale antenna "nodes" connected by optic fiber to a central hub. Each node receives optic signal from the hub and converts that signal into radio frequency (RF) signals for use by users in the area. Among other things, DAS is employed for wireless broadband. Wireless broadband is proving transformative on a global scale. As smartphones and tablets proliferate, data demand is leading to a critical deficit in wireless spectrum, requiring more wireless antennas and infrastructure. According to a 2011 report, wireless data traffic was 110 percent higher in 2011

than in the last half of 2010. Similarly, AT&T reports that its wireless data volumes have increased 30-fold since the introduction of the iPhone. Adding to the mix, 25 percent of all American homes are now wireless only. and wireless data traffic is expected to grow by a factor of 20 between 2010 and 2015. DAS can provide the critical network capacity to address such demand into the 21st Century.

Crown Castle's representatives were in attendance at the July 19, 2012, Planning Commission hearing, and more recently at the July 25, 2012, Stakeholder Meeting, where the Wireless Ordinance was discussed. This letter summarizes Crown Castle's comments concerning the Wireless Ordinance.

2. Applicable Legal Principles.

A. State Law.

State law, including Public Utilities Code section 7901 ("Section 7910"), governs the permitting of wireless telecommunications facilities in the ROW. Under Section 7901 Crown Castle qualifies as a "telephone corporation" with a "vested right" to occupy the ROW throughout the state. That vested right supersedes local franchise requirements and is guaranteed by both the state and federal constitutions. (Williams Communications v. City of Riverside. supra, 114 Cal.App.4th at p. 648; see also. Petaluma v. Pacific Tel. & Tel. Co. (1955) 44 Cal.2d 284. 288-289 [statewide franchise of Section 7901 is a "vested right"; no local franchise is necessary to enter municipal streets]; County of L. A. v. Southern Cal. Tel. Co. (1948) 32 Cal.2d 378, 384 [same principle cited]; Postal Tel. Cable Co. v. Railroad Com. (1927) 200 Cal. 463. 472 ["[t]he rights acquired by ... the provisions of the section, are vested rights which the constitutions, both state and federal, protect."].)

The rights afforded by Section 7901 are a matter of "statewide concern" that supersede -- and therefore obviate the need for -- a municipal grant of entry to the ROW. (City of Petaluma v. Pac. Tel. and Tel. Co., supra, 44 Cal.2d at pp. 287-289; see also Williams Communication v. City of Riverside. supra, 114 Cal.App.4th at p. 653 ["the construction and maintenance of telephone lines in the streets and other public places within the City is today a matter of state concern and not a municipal affair."].) The Legislature enacted SB621. now codified as Public Utilities Code section 7901.1, in 1994 to regulate construction activities in the ROW, Section 7901.1 (Section 7901.1), provides, in relevant part, "that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." (Pub. Util. Code, § 7901.1.) Section 7901.1 goes on to state that "[t]he control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner." (Ihid.)

Government Code section 50030 also applies to telephone corporations seeking to install their facilities in the ROW. That section provides that a city may not require payment for entry

Executive Office of the President Council of Economic Advisors (White House, Feb. 2012) at 2-6.

²U.S. Department of Health and Human Services (April 2011).

Id.

^{*}CAL PUB. LITE. CODE § 7901.1 (West Supp. 1997); see Analysis of SB 621, Cal. Sen. Rules Comm., Office of Senate Floor Analyses (S. 1994-95 Reg. Sess.)

into its ROW. Specifically, a city cannot impose an exaction that exceeds the "reasonable costs of providing the service for which the fee is charged." (Williams Communications v. City of Riverside, supra, 114 Cal. App. 4th at p. 648.)

The above statutes and case law give rise to four principles that should inform the City's deliberations about the siting of Crown Castle's DAS facilities:

- (1) Crown Castle has vested right to utilize the City's ROW:
- (2) The City's permitting requirements for Crown Castle must be imposed in a non-discriminatory manner and applied equally to "all entities" using the public ways of the City (not just applied equally among all telephone corporations:
- (3) Crown Castle need not obtain a local "franchise" to enter the City's ROW; and
- (4) The City is prohibited from imposing any fee to use the ROW, beyond what is required to address the "reasonable costs of providing the service for which the fee is charged" (i.e., the City cannot assess a general revenue fee for use the ROW).

B. Federal Law.

The City also is governed by the federal Telecommunications Act of 1996. Pub. L. No 104-104. 110 Stat. 56 (codified as amend in scattered sections of U.S.C., Tabs 15, 18, 47) ("Telecom Act"). When enacting the Telecom Act. Congress expressed its intent "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." (110 Stat. at 56.) As one court noted:

Congress enacted the TCA to promote competition and higher quality in telecommunications services and to encourage the rapid deployment of new telecommunications technologies. Congress intended to promote a national cellular network and to secure lower prices and better service for consumers by opening all telecommunications markets to competition.

(T-Mobile Central, LLC v. Unified Government of Wyandotte, 528 F.Supp, 2d 1128, 1146-47 (D. Kan. 2007). One way in which the Telecom Act accomplishes these goals is by reducing impediments imposed by local governments upon the installation of wireless communications facilities, such as antenna facilities. (47 U.S.C. § 332(c)(7)(A).) Section 332(c)(7)(B) provides the limitations on the general authority reserved to state and local governments. Those limitations are set forth as follows:

- (1) State and local governments may not unreasonably discriminate among providers of functionally equivalent services (§ 332(c)(7)(B)(i)(I)).
- (2) State and local governments may not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits, or has the effect of prohibiting, the provision of personal wireless services (better known as the "effective prohibition clause") (§ 332(c)(7)(B)(i)(II)).

- (3) State and local governments must act on requests for authorization to construct or modify wireless service facilities within a reasonable period of time (§ 332(c)(7)(B)(ii)).
- (4) Any decision by a state or local government to deny a request for construction or modification of personal wireless service facilities must be in writing and supported by substantial evidence contained in a written record (§ 332(c)(7)(B)(iii)).
- (5) Finally, no state or local government or instrumentality thereof may regulate the placement, construction or modification of personal wireless service facilities on the basis of the perceived environmental effects of radio frequency emissions to the extent that such facilities comply with federal communications commission's regulations concerning such emissions (§ 332(c)(7)(B)(iv)).

3. Specific Comments.

In light of the above principles. Crown Castle submits the following comments concerning specific provisions of the Ordinance:

- ROW facilities to the same discretionary entitlement process (a CUP. MUP, or LTP) that governs wireless telecommunications facilities on private property under the City's zoning ("Telecom Facilities"). The process purports to grant a right of entry to the ROW in exchange for the satisfaction of conditions of approval. By failing to provide for an exception for CLECs seeking to utilize the City ROW, the Ordinance conflicts with time-honored state law confirming the existence of a vested right to enter and use the ROW without having to obtain a local franchise. (Williams Communications v. City of Riverside, supra. 114 Cal. App. 4th at p. 648; see also Western Union Telegraph Co. v. Hopkins (1911) 160 Cal. 106 [observing "that the state in its sovereign capacity has the original right to control all public streets and highways" and that the section 536 franchise "included the right to such exclusive occupation by the company of portions of the streets as is maintained for the purpose of its system, leaving nothing in that behalf to be granted by the municipality."].) Since the Ordinance provides no exemption for CLECs seeking to invoke Section 7901 franchise rights, these sections conflict with state law.
- (b) Section 20.49.030 Definitions: The definitions section defines "public rights-of-way" to mean only the "surface" of any street or public way. By restricting the definition of ROW only to the surface of the street, the Wireless Ordinance precludes extension of the ROW to spaces occupied by poles and other above-ground facilities, thereby conflicting with Section 7901, which extends ROW franchise rights to the ability to construct "poles, posts, piers, or

This provision has been interpreted by the Federal Communications Commission ("FCC") to require local governmental agencies to act on wireless telecommunications siting applications within 150 days, or 90 days for collocation facilities. See Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely String Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (Federal Communications Commission, Nov. 18, 2009) WT Docket No. 08-165.

abutments for supporting the insulators, wires, and other necessary fixtures." (Pub. Util. Code. § 7901.)

- (c) Section 20.49.040: Available Technology: The Wireless Ordinance provides that Telecom Facilities "shall utilize the most efficient, diminutive and least obtrusive available technology ...," The mandatory language of the provision could be read to hold all wireless carriers and infrastructure developers to impossible technological standards that are outside the purview of local government to impose. Many design considerations must be taken into account in constructing a wireless network, including the need for coverage, capacity, and the ability to incorporate technological changes and upgrades. Such decisions are the prerogative of telephone corporations governed by the regulations of the California Public Utilities Commission, not the City under the proposed Ordinance.
- (d) Section 20.49.050: Location Preferences: DAS facilities generally utilize exiting vertical elements in the ROW, such as utility poles and streetlights. The "location preferences" relegate such facilities to "Class 3" type facilities, thereby rendering them more difficult to approve or subjecting them to greater scrutiny. By imposing more stringent controls over such facilities, the Wireless Ordinance purports to vest greater discretion in the decision-maker to deny access to the ROW, thereby asserting greater control over areas outside the ordinary zoning authority of the local agency. This section is in direct conflict with the statewide franchise rights granted to Crown Castle under § 7901, as discussed above.
- (e) Section 20.49.050(B): Prohibited Zones: The Wireless Ordinance imposes an outright ban on all Telecom Facilities located in zoning districts for single-unit or two unit residences. all multi-unit and mixed-use developments consisting of fewer than five units and all open-space zoning districts. The prohibited zones provision contains no exception for the ROW and no exception for technical constraints imposed by RF coverage needs. Such zoning restrictions therefore conflict with Section 7901 and could give rise to a prohibition of service under section 332(c)(7)(B)(i)(II) of the Telecom Act.
- (f) Section 20.49.050(C): Installations in the Public Right-of-Way: This section incorporates, in toto, Chapter 13.20 of the NBMC, which prohibits new poles in underground districts (see NBMC, § 13.20.030(A)) and thereby forces CLECs, such as Crown Castle, to use existing vertical elements, such as city-owned poles (subjecting them to a \$1.500 per-month fee). This section purports to prohibit installation of new poles in the ROW, in direct conflict with Section 7901. Insofar as the provision requires collocation on existing city streetlights, thereby subjecting the applicant to the City's license fee provisions, the section violates Government Code section 50030.
- (g) Section 20.49.060: General Development and Design Standards: The Wireless Ordinance places a heavy emphasis on aesthetic criteria. Other public utilities utilizing the ROW are not subject to such stringent approval criteria. This section therefore conflicts with Section 7901.1, which requires that all "entities" in the ROW be treated in an equal manner.

- (h) Section 20.49.060(C): Height: This section would impose a 35-foot height limitations on facilities located on existing vertical elements in the ROW. The provision features no technical feasibility exception, nor is there any determination or policy statement concerning how such a limitation is legitimately based on the "time, place and manner" controls allowed to local governmental agencies by Section 7901. Accordingly, the provision conflicts with Section 7901. In addition, this section also fails under application of the "all entities" standard of § 7901.1.
- (i) Section 20.49.060(D): Setbacks: The Ordinance also incorporates the standard setback restrictions imposed by the applicable zoning district. Such exclusions may constitute an outright prohibition, in violation of section 332(c)(7)(B)(i)(II), as well as a ban on ROW entry, in violation of Section 7901.
- (j) Section 20.49.060(F)(3)(c): Screening Standards: This section requires all ancillary DAS equipment to be located within the pole "without increasing the pole width" or located underground. Such a requirement is onerous and cost-prohibitive, if not impossible, to meet. At a minimum, a technical feasibility exception should be incorporated into this section.
- (k) Section 20.49.090: City-Owned Property: As noted above, the proposed amendments incorporate Chapter 13.20 of the NBMC, which prohibits new poles in undergrounding districts (see NBMC, § 13.20.030(A)) and thereby forces CLECs, such as Crown Castle, to use existing vertical elements, such as city-owned poles (subjecting them to a \$1,500 a month fee). This section, in combination with Section 20.49.050(C), could result in situations where the applicant is forced onto City-owned vertical elements, requiring the applicant to the pay the City's license fees, in violation of Government Code section 50030.

Crown Castle reserves its rights under federal and state law, including Government Code Section 65009, to challenge the Ordinance on the above grounds or additional grounds not specifically raised.

4. Conclusion.

The proposed amendments to the Wireless Ordinance, as currently drafted, do not take account of telephone corporations' rights under Section 7901. Instead of providing for a more limited form of local review over ROW facilities that would be consistent with the City's limited authority to impose "time, place, and manner" rules governing in an equivalent manner "all entities" access to the public way, the proposed amendments do the opposite: they impose a second tier of requirements, above those already in place for private property sitings. (See, e.g., NBMC, § 20.49.050(B).) At a minimum, Crown Castle would like to see an exception from the discretionary use permit requirement for "Telecom Facilities" located in the ROW, with appropriate time, place, and manner controls embodied in a ministerial design review process.

Because of the reasons stated in this letter. Crown Castle asks that the City reject this proposed ordinance.

City of Newport Beach August 28, 2012 Page 7

We appreciate the City's consideration of the matters contained in this letter. We will be present at the September 6, 2012, Planning Commission meeting and, in the meantime, are on hand to answer any questions you may have or to work with the City Planning Commission and Staff to address the concerns herein.

Very truly yours.

Dan Schweizer

Government Relations Counsel Crown Castle NG West Inc.

MWS:mws

2230377.1

ADDITIONAL MATERIALS RECEIVED

Wireless Telecommunications Facilities Ordinance

Code Amendment No. 2012-004





Planning Commission Study Session September 6, 2012 STAFF PRESENTATION



Background



- Existing Ordinance Adopted in 2002
- Comprehensive update
 - Update to reflect changes in law
 - Intended to balance needs of community by:
 - Providing for increasing demand for wireless networks
 - Mitigating the impacts of future telecom facilities
- Planning Commission Hearing on 7/19/2012
 - Written comments received from 4 parties

Background



- Commission requested:
 - Study session
 - Additional outreach with telecom industry and interested parties
- Stakeholder meeting conducted on 7/25/2012



1. Discretionary Permit Process

- Comment
 - Provide for administrative approval
 - Limit discretionary process
- Response/Recommendation
 - Administrative approval of screened or stealth facilities without public notice
 - Zoning Administrator review for most facilities
 - Planning Commission review for highly visible facilities located near residences



2. Legal Nonconforming Facilities

- Comment
 - Will nonconforming facilities be required to change or be eliminated
- Response/Recommendation
 - Existing, lawfully established facilities may continue
 - New or modified facilities must comply
 - Revise draft ordinance to enhance clarity



3. Definitions

- Comment
 - Confusing
- Response/Recommendation
 - Clarify definitions
 - Base station, public right-of-way, support equipment, wireless tower, and listed antenna support structures



4. Technology requirements

- Comment
 - "...the most efficient, diminutive and least obtrusive technology..."
- Response/Recommendation
 - Revise draft ordinance to remove "least efficient" or "diminutive" and stress "least obtrusive"



5. Location Preferences

- Comment
 - Proposed classification system is confusing
- Response/Recommendation
 - Clarify classification system
 - Eliminate "Collocation" class
 - Provide "Public Right-of-Way" class



6. Prohibited Locations

- Comment
 - Industry wants access to all zones, including residential
- Response/Recommendation
 - Access to multi-family zones improved
 - Access to single- and two-family zone areas provided within the public right-of-way (PROW)
 - No change to draft ordinance recommended



7. Installations in the Public Right-of-Way

- Comment
 - Draft ordinance too limiting on use of PROW
 - Underground vaults for support equipment infeasible
- Response/Recommendation
 - City controls time, place and manner of use of the PROW proposed process is reasonable
 - Underground vaults feasible, Title 13 does provide for flexibility
 - Revise draft ordinance to eliminate conflicting or duplication



8. General Development and Design Standards

- Comment
 - Screening is burdensome and is unfair treatment considering no screening of Edison facilities
- Response/Recommendation
 - Screening of telecom facilities is supported by applicable law and case law
 - No change to draft ordinance recommended



9. Height

- Comment
 - Taller facilities requested & Variance process difficult
- Response/Recommendation
 - Draft ordinance treats telecom facilities similar to other structures
 - Clarify provisions but no change to proposed height standards



10. Setback Standards

- Comment
 - Proposed "fall zone" setback equal to 110% height is excessive and unnecessary
- Response/Recommendation
 - Staff agrees, eliminate proposed additional setback



11. Screening Standards

- Comment
 - Restrictive, duplicative and flexibility needed
- Response/Recommendation
 - Revise draft ordinance to reflect changes in antenna classes (Collocation & PROW)
 - Revise to allow exceptions when requirements are infeasible



12. Permit Review Procedures

- Comment
 - Review procedures burdensome
 - Elimination of application submittal requirements
- Response/Recommendation
 - Provide administrative approval for Class 1 (screened/stealth)
 - Submittal requirements specified by CD Director within application consistent with Zoning Code



13. License Agreements for City-Owned Property

- Comment
 - Streamline entitlement process
 - Fee could violate State law
- Response/Recommendation
 - Concurrent processing should be allowed
 - Established fee is within City's right to regulate time,
 place and manner of use of PROW



14. Modification of existing facilities

- Comment
 - Draft complicated
 - 10% should be threshold for administrative approval
- Response/Recommendation
 - Simplify draft
 - 5% threshold based upon community sensitivity to height & desire to protect views



15. Radio Frequency (RF) Emissions Reporting

- Comment
 - FCC oversight sufficient, ordinance requirement is burdensome
- Response/Recommendation
 - Verification cannot be burdensome
 - No change to requirement

Summary



- Provide administrative approval for Class 1 facilities (screened/stealth)
- Eliminate "co-location" antenna class
- Create "public right-of-way" antenna class
- Reduce/eliminate complicating definitions

Summary



- Limit Planning Commission review to most visually obtrusive proposals
- Eliminate "Fall Zone" setback proposal
- Revise draft to simplify and clarify

Next Steps



- Staff to revise ordinance
- Provide revised draft in advance of meetings or hearings
- Additional stakeholder meeting
- Return to Planning Commission date TBD



For more information contact:

James Campbell, Principal Planner 949-644-3210 jcampbell@newportbeachca.gov www.newportbeachca.gov

Comments for September 6, 2012 Planning Commission Study Session regarding Wireless Ordinance

The following comments are on the staff regarding the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 as presented to the Newport Beach Planning Commission as Agenda Item 1 at its September 6, 2012 meeting.

The comments were prepared by Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229), and are a mix of what may seem major and minor points.

Additional Background Information

In addition to my previous comments reproduced on pages 38-48 of the staff report, I would like the Planning Commission to be aware of the following e-mail message sent, at her request, to Janet Johnson Brown (and copied to Jim Campbell) on August 3, following the July 25, 2012 "stakeholders" meeting described near the bottom of page 1 of the staff report:

Janet (& Jim),

Sorry to be so slow in getting this to you, but to follow up on our brief conversation after the July 25 wireless "stakeholders" meeting, with reference to the new Wireless Communication Facilities regulations in the City of Oceanside Local Coastal Program considered by the California Coastal Commission as Item 8a at their July 11, 2012 meeting (see complete text in the CCC staff report: W8a-7-2012.pdf, pages 23-42):

http://documents.coastal.ca.gov/reports/2012/7/W8a-7-2012.pdf

the features I saw that seemed particularly innovative and useful to CNB included:

- 1. Approval of telecom permit requires findings of a verifiable deficiency in existing coverage and that the means proposed to correct the deficiency are the least intrusive possible (Section 3907.A). This by now time-honored standard is, I think, no longer as clearly articulated in our own proposed code. Note also that although the regulation of applications to use the Oceanside public rights-of-way of way are rather vague (Section 3910.A), each encroachment permit ultimately requires the same findings to be made by the City Council (Section 3910.B).
- 2. To accommodate changing technology, Oceanside approvals are limited to 10 years with a possibility of three 2-year administrative extensions (maximum of 16 years total) after which re-application is required (Section 3915.B).
- 3. As with the CNB proposal, upon adoption of the new code, existing facilities that would not comply with the new standards become legally non-conforming, but in Oceanside they are NOT allowed to continue indefinitely simply by staying in compliance with the original code. Anything other than routine maintenance of existing operational equipment triggers a re-evaluation of the facility under the new code (Section 3916). A fairly complete re-evaluation can also be triggered, at the

planner's discretion, even when sites built under the new code are modified (Section 3917).

- 4. The Application Submittal Requirements in Section 3906 also seem pretty thorough. As best I can tell the similar detailed submittal requirements in our current CNB telecom code were inadvertently omitted from the proposal submitted to the Planning Commission.
- 5. Finally, Oceanside did not seem to feel any need to single out DAS facilities for special treatment (Section 3919).

I will try to submit more detailed comments on the current CNB proposal next week.

Yours,

Jim Mosher

Although other commitments prevented me from submitting the promised more detailed followup, I continue to feel these comments remain relevant and that the Oceanside ideas could be usefully incorporated into our proposed ordinance.

Subsequent to this, Costa Mesa introduced at its August 21, 2012 meeting (agenda item PH-2) an ordinance regarding Wireless Facilities in the Public Right-of-Way, which was adopted just two days ago, and also contains interesting provisions.

Comments on the Staff Report

As a Newport Beach citizen I am pleased to see that City staff has not caved in to most of the demands presented by the industry representatives. I feel, however, that the proposed ordinance still needs considerable more work.

Because of the extreme lateness of this submission I will just comment briefly on a few of the specific recommendations listed on pages 2-6 of the staff report:

Item 1 (Discretionary Permit Process): Without an extremely precise definition of what falls in "Class 1," I think the suggestion to allow them to be "administratively approved without providing notice to the public" is a very poor one. Even if the decision is "administrative" the absence of public notice means the public has no practical ability to appeal if they have reason to believe the administrative decision was incorrect. In my experience the Zoning Administrator is not overburdened, and considers considerably more minor matters. Nor is it an onerous burden on the applicant. In fact, a Zoning Administrator hearing took place simultaneously with the Telecom Stakeholders meeting on July 25th and two matters were disposed of in a total of 5 minutes.

Item 2. (Legal Nonconforming facilities): I find the recommendation hard to follow, but I think changing technology means that all wireless permits *should* be subject to sunsetting provisions (as in the Oceanside and Costa Mesa codes referenced above), when legally non-conforming facilities are upgraded they *should* be required to come into conformance with the current codes, not the local regulations in effect at the time of their initial approval (as I believe the proposed code reads).

Item 6. (Location Preferences, Prohibited Locations): I may be missing something, but I don't see the "*Planning Commission review at public hearings for exceptions to location standards*" that the report suggests is in the proposed code.

Item 12. (Permit Review Procedures): Again, I do not think *any* telecom applications should be exempted from public notice.

Item 13. (License Agreements for City-Owned Property): I feel it is very important that the public have a voice in the use of public property. Although somewhat outside the scope of the Study Session, City Charter Section 421 currently ensures that by restricting the authority to bind the City to contracts to the City Council – which in turn can act only at a publicly noticed meeting. A proposed "update" to the Charter on this November's ballot would overturn that longstanding protection by giving the Council the power to allow City staff to decide what public property it is appropriate to lease out for private commercial use, presumably without any public notice or input. I view that as a very bad change.

Additional Comment

I am very disappointed that staff has not seen fit to retain the restrictions and discretion found in our existing Wireless Code regarding the siting of telecom facilities that impact private views, or otherwise detrimentally impact private property (please see page 3 of my earlier comments as reproduced on page 40 of the 79 page Study Session staff report). I hope the Commission will ask for those provisions to be kept.

CITY OF NEWPORT BEACH PLANNING COMMISSION AGENDA

CITY COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD THURSDAY, SEPTEMBER 6, 2012 REGULAR MEETING - 6:30 p.m.

MICHAEL TOERGE Chair

BRADLEY HILLGREN Vice Chair

FRED AMERI Secretary

TIM BROWN
KORY KRAMER
JAY MYERS
LARRY TUCKER

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director
BRENDA WISNESKI, Deputy Community
Development Director

LEONIE MULVIHILL, Assistant City Attorney TONY BRINE, City Traffic Engineer

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: http://www.newportbeachca.gov and for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or Ibrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

NEWPORT BEACH PLANNING COMMISSION AGENDA CITY COUNCIL CHAMBERS – 3300 NEWPORT BOULEVARD THURSDAY, SEPTEMBER 6, 2012 REGULAR MEETING – 6:30 p.m.

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one (1) minute left for summation.) Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 Minutes of August 23, 2012

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one (1) minute left for summation.) Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

ITEM NO. 2 Bristol Chevron Service Station (PA2012-073) Site Location: 2121 Bristol Street

Summary:

Amend the existing use permit to construct the following: a 2,945-square-foot convenience store, two side-by-side automated car wash bays, and a new canopy with five new dispensers. Demolition would include three service bays, a snack shop, existing canopy and six dispensers, and an automated car wash. The existing underground storage tanks and the Healy clean air system will remain. Also included in the request is a Type 20 (Off Sale Beer & Wine) ABC license.

CEQA Compliance:

The project is categorically exempt under Section 15332, of the California Environmental Quality Act (CEQA) Guidelines - Class 32 (In-fill Projects).

Recommended Action:

1. Continue the item to September 20, 2012, per the request of the applicant.

ITEM NO. 3 441 Old Newport Medical Office Building (PA2011-056) Site Location: 441 Old Newport Boulevard

Summary:

A request for a Conditional Use Permit to reduce the required off-street parking and utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which currently is not occupied.

CEQA Compliance:

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Recommended Action:

- 1. Conduct public hearing; and
- 2. Adopt Resolution No. ____ approving Conditional Use Permit No. UP2011-011.

ITEM NO. 4 Evensen Residence (PA2012-089) Site Location: 3225 Ocean Boulevard

Summary:

A Variance request to allow the construction of a new 3-level, single-family residential dwelling to encroach 10 feet into the required 10-foot front yard setback at the lower level. The proposed encroachment is below existing grade and would not be visible from Ocean Boulevard.

CEQA Compliance:

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures).

Recommended Action:

- 1. Conduct public hearing; and
- 2. Adopt Resolution No. ____ approving Variance No. VA2012-003.

VIII. STAFF AND COMMISSIONER ITEMS

- ITEM NO. 4 MOTION FOR RECONSIDERATION
- ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT
- ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT.
- ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

NEWPORT BEACH PLANNING COMMISSION MINUTES

Council Chambers – 3300 Newport Boulevard Thursday, August 23, 2012 REGULAR MEETING 6:30 p.m.

- **I. CALL TO ORDER** The meeting was called to order at 6:30 p.m.
- II. PLEDGE OF ALLEGIANCE Commissioner Kramer

III. ROLL CALL

PRESENT: Ameri, Brown, Hillgren, Kramer, Myers, Tucker

ABSENT (Excused): Toerge

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Melinda Whelan, Assistant Planner; Fern Nueno, Associate Planner

IV. PUBLIC COMMENTS

Vice Chair Hillgren invited those interested in addressing the Commission on items not on the agenda, to do so at this time.

Jim Mosher commented on Council action regarding the City Charter update specifically relative to approval of the yearly budget and review of public works projects. He felt it important for the Planning Commission to retain the charge of reviewing these issues as well as others.

There being no others wishing to address the Commission, Vice Chair Hillgren closed the public comment section of the meeting.

V. REQUEST FOR CONTINUANCES

Deputy Community Development Director Wisneski addressed a request for continuance of Item No. 2, Bristol Chevron Service Station (PA2012-073). She reported that the applicant has requested that the item be continued to the Planning Commission meeting of September 6, 2012.

Motion made by Commissioner Tucker and seconded by Commissioner Brown, and carried 6 - 0, to continue Item No. 2 until the Planning Commission meeting of September 6, 2012.

AYES: Ameri, Brown, Hillgren, Kramer, Myers and Tucker

NOES: None
ABSTENTIONS: None
ABSENT (Excused): Toerge

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JULY 19, 2012

Recommended Action: Approve and file

Commissioner Myers noted changes to the minutes.

Interested parties were invited to address the Commission on this item.

Jim Mosher made minor typographical corrections to the minutes.

There being no others wishing to address the Commission, Vice Chair Hillgren closed public comments for this item.

Motion made by Commissioner Kramer and seconded by Commissioner Tucker, and carried 5 - 1, to approve the Planning Commission meeting minutes of July 19, 2012, as amended.

AYES: Ameri, Brown, Kramer, Myers and Tucker

NOES: None
ABSTENTIONS: Hillgren
ABSENT (Excused): Toerge

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 Bristol Chevron Service Station (PA2012-073) Site Location: 2121 Bristol Street

The aforementioned item was continued to the Planning Commission meeting of September 6, 2012.

ITEM NO. 3 St. Matthew's Preschool Capacity Increase (PA2012-081) Site Location: 2300 Ford Road

Associate Planner Fern Nueno presented details of the report noting the applicant is requesting to amend their use permit in order to allow sixteen (16) additional children at the preschool. She addressed location, surrounding properties, existing structures, original approval of the use permit and previous amendment, hours of operation, parking requirements, circulation and student drop-off and pickup, existing conditions, and recommendations.

Commissioner Myer's inquired as to the size requirements for the interior space and licensing requirements regarding the additional number of students. Ms. Nueno deferred to the applicant for a response.

Interested parties were invited to address the Commission on this item.

David Pfeifer, Domus Studio Architecture, reported they were the original architect for the campus and responded to Commissioner Myer's question by noting that the State licensing requirement is 35 square feet per child and the square footage exceeds the requirement.

In response to an inquiry from Commissioner Myers, Mr. Pfeifer reported that restroom facilities are available nearby to accommodate the children. He noted that there are no sinks in the classrooms but that sinks are located nearby.

There being no others wishing to address the Commission, Vice Chair Hillgren closed public comments for this item.

Motion made by Commissioner Tucker and seconded by Commissioner Kramer, and carried 6-0, to adopt Resolution No. 1890 approving Conditional Use Permit No. UP2012-013 subject to the conditions of approval included in Exhibit "A" of the draft resolution.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Tucker

NOES: None ABSTENTIONS: None ABSENT (Excused): Toerge

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION

In response to an inquiry from Commissioner Ameri regarding clarification of the item, Deputy Community Development Director Wisneski reported the item was added to the agenda as a result of the Commission's recent update to the Planning Commission Procedures. She noted that it is similar to what Council does, allowing the Commission to reconsider items that have been heard on the present agenda.

There was no motion for reconsideration.

ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Wisneski distributed information to invite the Commissioners to the Planning Directors of Orange County Forum to be held in October, 2012, which is being planned by Community Development Director Brandt and will showcase Assistant City Attorney Leonie Mulvihill. In addition, she announced that at its last meeting, Council initiated a Zone Code Amendment to consider that when residential lots are merged, residential development standards will be modified so that there is no net increase of the setback and buildable areas. The item will be presented to the Planning Commission at an upcoming meeting. She reported that a study session for the proposed Telecomm ordinance is scheduled for September 6, 2012, at 5:00 p.m., prior to the regular meeting.

Discussion followed regarding availability of the draft ordinance prior to the study session. Ms. Wisneski reported that a detailed review of the draft telecomm ordinance will not occur at the study session, but rather the objective will be to share with the Commission what has occurred during the stakeholder meetings. She added that language from the ordinance will be shared with the Commission because there have been some changes made and that information will be shared with the Commission prior to the study session.

Assistant City Attorney Mulvihill noted that the issue is complex and that the Commission will be provided with sufficient information on important issues.

Ms. Wisneski announced the promotion of Fern Nueno to Associate Planner.

In response to an inquiry from Commissioner Myers regarding the Bristol Chevron Service Station, Ms. Wisneski affirmed that the item will be presented for consideration at the Planning Commission's meeting of September 6, 2012.

ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT.

None

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

Commissioner Brown indicated that he has a prior commitment and may be late for the Planning Commission Study Session of September 6, 2012.

IX. <u>ADJOURNMENT</u>

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:00 p.m.

The agenda for the Regular Meeting was posted on August 17, 2012, at 9:45 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman
Fred Ameri, Secretary

ADDITIONAL MATERIALS RECEIVED

To: Planning Commissioners
Subject: Additional Materials Received

Additional Materials Received Planning Commission September 6, 2012

Item No. 1a: Draft Minutes of August 23, 2012

Item No. 3b: 441 Old Newport Medical Office Building - PA011-056

----Original message----

From: Jim Mosher < jimmosher@yahoo.com>

To: "Houston, Rob" < RHouston@newportbeachca.gov>

Sent: Thu, Sep 6, 2012 17:54:55 GMT+00:00

Subject: Written comments on Sept. 5, 2012 evening Planning Commission agenda

To whom it may concern:

Regarding the posted packet for the Planning Commission's September 5, 2012 regular evening agenda I have the following observations regarding the two items I've reviewed.

Item 1 ("Minutes of August 23, 2012") --

On page 3, in the first full paragraph under "ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT":

- 1. I suspect "a Zone Code Amendment" was meant read "a ZONING Code Amendment"
- 2. In "the proposed Telecomm ordinance" I believe the customary spelling is "Telecom" with a single "m" as used in the staff report for the afternoon Study Session.

===

Item 3 ("441 Old Newport Medical Office Building (PA2011-056)") --

Comment 1: On page 3 of PC 4, the "Reciprocal Parking Easement Agreement" (p. 29 of the 41 page PDF), the final two lines of Condition 2 appear to say Ocean View Medical Investors is being given the right to park ONLY in the "rear portion" of the Soffer property, which appears to be the currently unpaved area designated on Exhibit C (p. 35 of the staff report). This differs from the plan shown on the last page of the report (p. 41) which also shows 5 cars parallel parked in the paved front area of the Soffer property (that the aerial photo on p. 2 seems to show currently striped for 5 or 6 diagonal spaces).

Comment 2: If the aerial photo is correct and if the vacant restaurant were to reopen in its current configuration, then under the plans shown in the staff report there would appear to be NO paved parking spaces available for the restaurant use during the hours when the proposed medical office is operating at full capacity.

CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 6, 2012 Planning Commission Hearing Agenda Item No. 2

SUBJECT: Bristol Chevron Service Station

(PA2012-073) 2121 Bristol Street

Conditional Use Permit No. UP2012-012

APPLICANT: Chevron Products. Co.

PLANNER: Melinda Whelan, Assistant Planner

(949) 644-3221, mwhelan@newportbeachca.gov

PROJECT SUMMARY

Amend the existing use permit to construct the following: a 2,945-square-foot convenience store, an additional automated car wash bay next to an existing renovated car wash bay, a new canopy with five new dispensers, and a trash enslosure with recycling bins. Demolition would include three service bays, a snack shop, an existing canopy and six dispensers. The existing underground storage tanks and the Healy clean air system will remain. Also included in the request is a Type 20 (Off Sale Beer & Wine) ABC license.

RECOMMENDATION

Continue the item to September 20, 2012, per the applicant's request.

Prepared by: Submitted by:

Melinda Whelan

Assistant Planner

Brenda Wisneski, AICP, Deputy Director

CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 6, 2012 Agenda Item No. 3

SUBJECT: 441 Old Newport Medical Office Building - (PA2011-056)

Conditional Use Permit No. UP2011-011

APPLICANT: John Bral,

PLANNER: Melinda Whelan, Assistant Planner

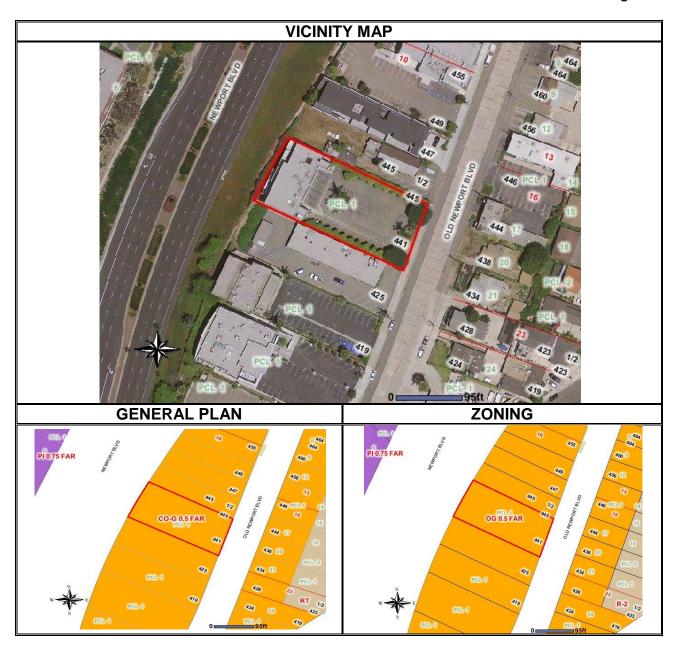
(949) 644-3221, mwhelan@newportbeachca.gov

PROJECT SUMMARY

A request to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 square feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaraunt. A parking management plan that includes a valet parking service is proposed for all of the on-site and off-site parking.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ Approving Conditional Use Permit No. UP2011-011 (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE			
ON-SITE	General Commercial office (CO-G)	Office General (OG)	Vacant general office			
NORTH	CO-G	OG	Vacant restaurant			
SOUTH	CO-G	OG	Existing Office			
EAST	CO-G	OG	Existing residential			
WEST	N/A	N/A	Overlooks Newport Blvd.			

INTRODUCTION

Project Setting

The subject commercial property is located north of Hospital Road on Old Newport Boulevard. The site is approximately 23,080 square feet and is developed with a 11,540-square-foot building formally occupied by general office uses and is currently being renovated. The rear of the property overlooks Newport Boulevard. The property to the north is developed with a vacant restaurant and accessory building. The property to the south is developed with a commercial office building and a freestanding commercial retail building. Directly across Old Newport Boulevard, to the east, is a mix of homes on commercially zoned lots and general commercial and office buildings.

DISCUSSION

Analysis

General Plan

The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

Zoning Code

The property has a Zoning designation of Office General (OG) 0.5 FAR which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. Medical office uses are permitted by-right in this zoning district. With the exception of the required off-street parking, the building complies with the floor area ratio (FAR), height, setbacks and other standards of the Zoning Code.

Reduction of Off-Street Parking

Section 20.40.110, Adjustments to Off-Street Parking Requirements, provides a method for reducing the off-street parking requirements with the approval of a conditional use permit by the Planning Commission and in compliance with the following conditions:

- 1. The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that parking demand will be less than the required number of spaces or that other parking is available (e.g., City parking lot located nearby, on-street parking available, greater than normal walk in trade, mixed-use development); and
- A parking management plan shall be prepared in compliance with subsection (C) of this section (Parking Management Plan).

Parking Demand

To best understand the actual parking demand, staff reviewed a previous parking demand analysis and monitored the parking demands of similar uses in the area. In 2004, a parking demand analysis was prepared by LSA Associates for a proposed medical office development at 496 Old Newport Boulevard. This project proposed the construction of a 12,500 square-foot medical building and 50 parking spaces, including 5 on-street spaces. The parking analysis supported a parking ratio of 1 space per 250 square feet concluding that the projected demand would be less at 1 space per 255 square feet.

The LSA parking demand analysis for the 496 Old Newport Boulevard project analyzed two nearby sites developed with similar sized medical office buildings located at 415 and 455 Old Newport Boulevard. Table 1 indicates the results of LSA's study. The Peak Parking Demand Results for 415 and 455 Old Newport Boulevard was the highest observed parking count over two days. The peak parking demand for 496 Old Newport Boulevard was determined to be the average of the two Peak Parking Demand Results.

Table 1 LSA Parking Demand Analysis, 2004									
Address Medical Office Parking Spaces Peak Parking Dem Gross Square Provided									
	Footage								
415 Old Newport Blvd	11,179 sq. ft.	58 spaces (including 12 off-site)	52 spaces 1 space per 215 sq. ft.						
455 Old Newport Blvd	10,687 sq. ft.	53 spaces	33 spaces 1 space per 324 sq. ft.						
496 Old Newport Blvd (projected demand)	12,500 sq. ft.	50 spaces (including 5 on-street)	49 spaces 1 space per 255 sq. ft.						

Staff confirmed the findings of the 2004 LSA study by conducting parking counts at the 415, 455, and 496 Old Newport Boulevard medical office buildings. Table 2 indicates the results of staff's counts. The Peak Parking Demand Results for each site was determined by observing the parking demand (counting cars) at three different times over two days, then taking the highest of those counts.

As shown, the existing medical office buildings have a lower parking demand than the Zoning Code requirement of 1 space per 200 square feet. The proposed medical office would provide 1 space per 227 square feet (51 spaces) for the 11,540 square-foot medical office building which exceeds the actual peak parking demand found by LSA's study and staff's counts.

Table 2 Staff Parking Counts, 2012									
Address	Medical Office	Parking Spaces	Peak Parking						
	Gross Square	Provided	Demand						
115 011 11	Footage	50	10						
415 Old Newport Blvd	11,179 sq. ft.	58 spaces	40 spaces						
		(including	1 space per 280 sq. ft.						
		12 off-site)							
455 Old Newport Blvd	10,687sq. ft.	53 spaces	35 spaces						
			1 space per 306 sq. ft.						
496 Old Newport	11,750. ft.	47 spaces	29 spaces						
Blvd*		(including 2 on-street)	1 space per 406 sq. ft.						
Proposed Project	11,540 sq. ft.	51 spaces	51 spaces						
	•	(including 7 off-site)	1 space per 227 sq. ft.						
Zoning Code	NA	NA	1 space per 200 sq. ft.						
Requirement									

^{*} Project approved and built is less than originally proposed project analyzed by LSA

Parking Management Plan and Off-site Site Parking

To further support the request for a reduction in the required parking, the applicant has provided a parking management plan that utilizes a valet parking service with the goal of using the parking spaces in the most efficient manner possible (Attachment No. PC 3). The plan includes a valet operation that would allow the customers the choice to valet or self-park on-site. If the parking spaces are fully utilized, use of valet would be mandatory. The seven (7) off-site spaces (455 Old Newport Boulevard) would be valet parked only. The applicant has authorization to use 455 Old Newport Boulevard for parking through a private Reciprocal Parking Easement Agreement (Attachment No. PC 4) that essentially allows the office site to use the restaurant site for parking during the day and the restaurant to use office parking in the evening. The agreement runs with the property and is binding upon change in ownership, therefore, the long term availability is expected.

Findings for Approval

Off-site Parking Findings for Approval

Pursuant to Section 20.40.100 B., to approve off-site parking, the Planning Commission shall make the following findings in addition to those required for the approval of a conditional use permit (see following section for conditional use permit findings):

- The parking facility is located within a convenient distance to the use it is intended to serve;
- 2. On-street parking is not being counted towards meeting parking requirements;

- 3. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and
- 4. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

The off-site parking located at 445 Old Newport Boulevard is abutting the subject property to the north. The use of on-street parking for the proposed medical use is not proposed. The off-site parking spaces would be "valet only" therefore, customers will not be accessing the off-site parking lot. By using a valet-only service and due to the proximity to the off-site parking, the creation of traffic hazards or negative impacts is not anticipated. The existing Reciprocal Parking Easement Agreement (Attachment No. PC 4) calls for the restaurant site (445 Old Newport Boulevard) to have parking available for the subject office use (441 Old Newport Boulevard) during the office business hours and for the office site to have parking available for the restaurant use during restaurant hours.

To ensure the availability of off-site parking, off-site approvals require the operator to notify the City of a change of ownership or use of the parcel where the off-site spaces are located, or changes in the use that the spaces are intended to serve, or of any termination or default of the agreement between the parties. Upon termination of the agreement the size or capacity of the medical use shall be reduced in proportion to the parking spaces lost or other parking spaces are secured.

Conditional Use Permit Findings for Approval

Pursuant to Section 20.40.100 A. and 20.40.110 B., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

- 1. The use is consistent with the General Plan and any applicable specific plan;
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or

otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Due to the proximity to Hoag Hospital, medical office buildings are common along Old Newport Boulevard. Medical offices are consistent with the CO-G General Plan land use designation and are allowed by-right within the OG zoning district. The proposed off-site parking is in a convenient location and permanently available as required by Code. Parking demand counts of similar medical office buildings along Old Newport Boulevard suggest that actual parking demand for buildings of this size are less than the Zoning Code requirement. Vehicle circulation, including the valet operation, have been reviewed by the City Traffic Engineer and a final parking management plan including the valet operation plan is required to be approved prior to implementation of the medical use and valet service.

As a safeguard, a condition of approval (Condition No. 4) has been included in the draft resolution requiring a 6-month review of the Conditional Use Permit by the Community Development Director. The review will ensure that an adequate number of spaces are provided and the parking demand does not exceed the supply. The review will also confirm that the use of the off-site spaces is functioning in a safe and acceptable manner.

<u>Summary</u>

In conclusion, the parking analysis provided by LSA and expanded upon by staff provides substantial evidence that these similar type and sized medical office buildings within this area of the City do not demand the parking required by the Zoning Code. With the parking management plan including the valet, the availability of off-site parking spaces, and compliance with the conditions placed upon the use of the site the proposed 51 spaces appears to be sufficient for the proposed medical office use. After a thorough review of the proposal and issues, staff believes the findings can be made and a draft resolution for approval is provided as Attachment No. PC 1.

Alternatives

- The Planning Commission may suggest specific project modifications or operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting to allow redesign of the project.
- 2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application and adopt the draft resolution for denial (Attachment No. PC 5).

Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots with no or neglibile expansion of use.

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by: Submitted by:

Melinda Whelan Assistant Planner

Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 LSA Parking Demand Analysis for 496 Old Newport Boulevard Project
- PC 3 Parking Management Plan including Valet Operation Plan
- PC 4 Reciprocal Parking Easement Agreement
- PC 5 Draft Resolution for Denial
- PC 6 Project plans

Attachment No. PC 1

Draft Resolution with Findings and Conditions

RESOLUTION NO. 2012-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. 2011-011 FOR A REDUCTION OF THE OFF-STREET PARKING REQUIREMENT AND TO UTILIZE AN OFF-SITE PARKING LOT FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
- 2. The applicant proposes a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 quare feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
- 3. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
- 4. The subject property is not located within the coastal zone.
- 5. A public hearing was held on September 6, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). The medical use would occupy an existing general office building and utilize existing parking lots with a negligibile expansion of use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.40.100 B. (Off-Site Parking) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for off-site parking are set forth:

<u>Finding</u>

A. The parking facility is located within a convenient distance to the use it is intended to serve.

Facts in Support of Finding

1. The off-site parking spaces are located within the parking lot immediately to the north of the subject property.

Finding

B. On-street parking is not being counted towards meeting parking requirements;

Facts in Support of Finding

1. The medical office is proposing a total of 51 parking spaces (a reduction of 5 required spaces) including 7 off-site spaces. None of the spaces counted are on-street.

Finding

C. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area;

Facts in Support of Finding

1. The off-site parking will be exclusively for the valet operation plan. The circulation of the valet operation plan has been reviewed by the City Traffic Engineer. A condition of approval requires that the final valet operation be approved by the City Traffic Engineer and any future changes will require additional review and approval by the City Traffic Engineer.

Finding

D. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve;

Facts in Support of Finding

- 1. There is a recorded Reciprocal Parking Easement Agreement between the subject property and 445 Old Newport Boulevard. This agreement allows reciprocal parking for the medical office use and for the restaurant use, with the office using the parking on the restaurant site during the daytime when the restaurant is closed and the restaurant using the office site at night when the medical office is closed. The restaurant is currently vacant.
- A condition of approval requires review of the parking operation at 6 months from occupancy of medical office building to ensure that an adequate number of spaces are provided and the use of the off-site spaces is operating in a safe and efficient manner.
- 3. A condition of approval requires that the applicant notify the City of any changes to the off-site parking lot such as the re-opening of the restaurant or the implementation of a use with the same hours as the medical office, or a termination or default of the existing Reciprocal Parking Easement Agreement. Upon such notification, the Community Development Director can determine if an alternative location for off-site parking spaces is needed or a reduction of the medical office use in proportion to the parking spaces lost is required.

Pursuant to Section 20.40.100 A. and 20.40.110 B., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first finding all of the following per Section 20.52.20 (Conditional Use Permits):

Finding

E. The use is consistent with the General Plan and any applicable specific plan;

Facts in Support of Finding

1. The property is designated with a General Plan land use of General Commercial Office (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory and retail uses. The proposed medical office use is consistent with the intent and goals of this designation.

Finding

F. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding

1. The property has a Zoning designation of Office General (OG) which is intended to provide areas for administrative, professional, and medical offices with limited retail uses. The proposed medical office use is consistent with the intent of this designation.

Finding

G. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;

Facts in Support of Finding

- 1. Old Newport Boulevard is developed with a mix of business, medical offices and other similar uses.
- 2. Based on parking counts, three existing medical office buildings along Old Newport Boulevard demonstrate an actual parking demand that is lower than the Zoning Code requirement of 1 space per 200 square feet. The proposed project provides a sufficient number of spaces (51) and the reduction of 5 spaces is warranted.
- 3. The proposed vehicle circulation of the on-site and off-site parking lot at 445 Old Newport Boulevard have been reviewed and approved by the City Traffic Engineer.
- 4. The approved parking management plan, including the valet operation, ensures the circulation and the parking lots function in an efficient and safe manner and meets the City Traffic Engineer recommendations, consistent with City-wide policies.
- 5. The off-site parking spaces will be "valet only" to ensure the use of the off-site parking is properly managed under the approved parking management plan.
- 6. The access to the site and the off-site parking is from Old Newport Boulevard and has been determined to be adequate for the use and is compatible with the other commercial lots in the area.

<u>Finding</u>

H. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and

Facts in Support of Finding

- 1. The on-site parking lot and the portion of the 445 Old Newport Boulevard parking lot have been reviewed for adequate access and circulation for use by employees, patrons and access by emergency vehicles.
- 2. Aisle widths and parking sizes have been reviewed for proper circulation by the City Traffic Engineer and a final review and approval is required prior to occupancy and implementation of the medical use.
- 3. Conditions of approval have been included with this resolution to ensure fire services and utilities are protected in place.

Finding

I. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding

- 1. The use includes a parking management plan with a valet operation for the on-site and off-site parking areas. The circulation of the final parking management plan including the valet operation plan will be approved by the City Traffic Engineer.
- 2. The Community Development Director shall review the parking management plan approximately 6 months from the date of occupancy of the medical office building to ensure the operation is not impacting the surrounding neighborhood, to confirm that the number of parking spaces are sufficient for the parking demand and that the valet operation plan is being implemented in an acceptable manner.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit Application No. UP2011-011, subject to the conditions set forth in the draft resolution, which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 6 th DAY OF September, 2012.
AYES:
NOES:
ABSTAIN:
ABSENT:
BY: Michael Toerge, Chairman
BY: Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

- 1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
- 2. The development shall be in substantial conformance with the approved site plan and valet plan stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval).
- 3. A parking management plan, including a final valet operation plan and circulation details of the off-site parking area, requires a final review and approval by the City Traffic Engineer and Community Development Director prior to occupancy of the medical use. Any future changes to this plan would require additional review.
- 4. The Community Development Director shall review of effectiveness of the parking management plan approximately 6 months from the date of occupancy of the medical office building to verify that 51 spaces is an adequate number of parking spaces and the demand doesn't exceed the supply. The review will also evaluate the use of the off-site lot and that the parking management, including the valet operation, is being implemented in an acceptable manner.
- 5. This Use Permit may be modified or revoked by the City Council or the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
- 6. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
- 7. The Community Development Director shall be immediately notified of any change of ownership, use or access to the property where the 7 off-site spaces are located (455 Old Newport Boulevard), or of any termination or default of the existing Reciprocal Easement Parking Agreement between the parties.
- 8. Upon notification that the agreement for the required off-site parking has terminated or access to those spaces is no longer available, the Director shall establish a reasonable time in which one of the following shall occur:
 - a. Substitute parking is provided that is acceptable to the Community Development Director; or

- b. The size or capacity of the medical office use is reduced in proportion to the parking spaces lost.
- 9. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
- 10. Use Permit No. 2011-0111shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 11. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
- 12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the (Old Newport Medical Office Building) project including, but not limited to, (Use Permit No. 2011-011) and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

SIGNAGE

13. New signs or changes to existing signs shall comply with sign regulations required in Zoning Code Section 20.42 (Sign Standards), as well as City Standard 110-L to ensure adequate site distance.

PUBLIC WORKS/UTIILITIES

- 14. All improvements shall be constructed as required by Ordinance and the Public Works Department.
- 15. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels and curb & gutter along the Old Newport Boulevard frontage.

- 16. All existing drainage facilities in the public right-of-way, including the existing curb drains along Old Newport Boulevard frontage shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements.
- 17. An encroachment permit is required for all work activities within the public right-of-way.
- 18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
- 19. All on-site drainage shall comply with the latest City Water Quality requirements.
- 20. Parking spaces and drive aisles shall be per City Standards STD-805-L-A and STD-805-L-B.
- 21. The existing private trees along the Old Newport Boulevard frontage are overgrown into power lines and adjacent property. These trees shall be trimmed back behind the property line at all times or removed.
- 22. The hedge along the North property line is encroaching into the Old Newport Boulevard public right-of-way/sidewalk. This hedge shall be trimmed back behind the property line at all times.
- 23. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, if applicable.
- 24. New and existing fire services shall be protected by a University of Southern California approved double check detector assembly and installed per
- 25. New and existing commercial domestic water meter(s) shall be protected by a USC approved reduced pressure backflow assembly and installed per STD-520-L-A.
- 26. Landscaping lines shall be protected by a dedicated USC approved reduced pressure backflow assembly.
- 27. Install new curb, gutter, sidewalk and driveway along 445 Old Newport Boulevard frontage.
- 28. All traffic signage shall comply with the current California Manual of Uniform Traffic Control Devices. All traffic striping shall comply with the current Caltrans standard plans.

Attachment No. PC 2

LSA Parking Demand Analysis for 496 Old Newport Blvd. Project

D to LOS E. If an intersection is operating at LOS E or worse in the baseline condition, project impact occurs when the project-generated traffic increases the ICU by 0.01 or more.

PROPOSED PROJECT

Project Description

The project proposes the removal of the existing land use on the project site and replacement with a 12,500-square-foot medical office building with a 45-space parking structure. The existing on-site land use consists of 1,094 square feet of retail sales, 1,955 square feet of auto repair, and a two-story single-family home. Figure 2 shows the site plan for the proposed project. Access to the project site will be provided via a full-access driveways off Old Newport Boulevard. Peak-hour trips for the existing land uses and the proposed project were generated using trip rates from the Newport Beach Transportation Analysis Model (NBTAM) and the Institute of Transportation Engineers (ITE) Trip Generation (7th edition). Vehicle trips associated with the existing land uses were subtracted from the project's trip generation to determine the new peak-hour trips generated by the site. The project trip generation analysis is presented in Table A.

Table A: Project Trip Generation

114.5	-			AM Peak Hour			PM Peak Hour		
	Size	Units	ADT_	In	Out	Total	In	Out	Total
Existing Land Use								-	
Retail	1.094	TSF							
Trip Rat	es¹		45	0.60	0.50	1.10	1.90	2.00	3.90
Trip Generati	on .		49	1	1	1	2	2	4
Auto Repair	1.955	TSF				. "			
Trip Rat	es².		20	1.91	1.03	2.94	1.69	1.69	3.38
Trip Generati			39	4	2 .	6	3	3	6
Single-Family Residential	1	DU	٠.						
Trip Rate	es ³		11	0.20	0.70	0.90	0.70	0.40	1.10
Trip Generati	on		11	0	1	1	1	0	1
Existing Trip Generation			99	5	3	8	6	6	11
·					•				
Proposed Project									
Medical Office	12.500	TSF		l .					
Trip Rate	es ⁴ ·		50	2.40	0.60_	3.00	1.50	3.50_	5.00
Project Trip Generation			625	30	8	38	19	44	63
			526				- 40		
Total Project Trips (Proposed—Existing)				25	4	30	13	38	51

Notes:

ADT-Average Daily Trips

TSF-Thousand Square Feet

DU-Dwelling Unit

¹ General Commercial-NBTAM-Newport Beach ADT and Peak Hour Trip Rate Summary

² Daily trip rate from SANDAG trip rates; Peak hour trip rates from the Institute of Transportation Engineers, Trip Generation, 7th Edition - Automobile Care Center (Land Use Code 942)

Res-Low (SFD)-NBTAM-Newport Beach ADT and Peak Hour Trip Rate Summary

⁴ Medical Office-NBTAM-Newport Beach ADT and Peak Hour Trip Rate Summary

contribution would not be considered significant. The intersection of Newport Boulevard/West Coast Highway is forecast to operate with satisfactory levels of service during both peak hours.

ON-SITE CIRCULATION

LSA has evaluated the on-site circulation of the proposed project using the standards set forth in Chapter 20.66 of the City of Newport Beach Zoning Ordinance. As illustrated in the site plan (Figure 2), access to the proposed parking area will be provided off Old Newport Boulevard. The project has been designed such that the first floor of the development is the parking area, with medical offices making up the second floor. A lobby with stairs and elevators is provided along the Old Newport Boulevard frontage.

Newport Beach City Standard STD-805-L-A and STD-805-L-B requires that a standard parking stall be 8'6"x17'. The width of the parking spaces provided in the site plan varies from 8'6" to 9'0". Eighteen-foot-deep parking stalls are provided in the interior and 17-foot-deep parking stalls with a 1-foot overhang are provided around the perimeter of the site. The proposed parking spaces meet or exceed the City's 8'6"x17' standard. However, parking stalls that are located adjacent to a wall, column, or other obstruction should be six inches wider than the standard 8"6". Twenty-four of the parking stalls shown on the site plan do not meet this standard. The site plan should be revised to provide a parking stall with a minimum width of 9 feet and a minimum depth of 18 feet adjacent to all walls, columns, and other obstructions.

The parking lot circulation was analyzed using turn radius templates from the Institute of Transportation Engineers for a medium, and large-sized passenger car. The turning template analysis is illustrated in Figures 12 and 13. One area of concern is the dead-end drive aisle east of the lobby. The site plan provides an extra five-foot buffer at the end of this aisle to assist vehicles maneuvering into or out of the parking stalls adjacent to the dead-end. Using the turning templates, it was found that a medium-sized passenger car would experience little difficulty entering or exiting these parking stalls. However, a large passenger car, such as a large sport utility vehicle, would be required to make several maneuvers to back out of these parking stalls. To minimize the number of parking maneuvers into and out of the parking stalls at the "dead-end" area, these stalls could be reserved for physicians or employees, thereby providing the more easily accessible parking stalls for patients and visitors.

The trash enclosure will be accessed from inside the parking area. According to the applicant, the trash collector will use a pickup truck with a forklift attachment to remove the trash dumpsters from the enclosure. The parking area will not need to accommodate any vehicle larger than the large-sized passenger car. As a result, turning and maneuvering area on the site plan is forecast to be adequate.

PARKING DEMAND ANALYSIS

The project will provide 50 parking spaces, including 5 on-street parking spaces. The Planning Department has requested that a parking demand analysis be conducted to document the actual parking demand that might be experienced by the project and to determine whether 50 parking spaces will be adequate to meet the forecasted demand. Parking accumulation surveys were conducted at two similar sites, 415 Old Newport Boulevard and 455 Old Newport Boulevard. The parking

accumulation surveys were conducted by Southland Car Counters on Wednesday, January 7, and Thursday, January 8, 2004, between 7:00 a.m. and 7:00 p.m. Table E provides the results of the parking survey.

Table E: Parking Accumulation Survey Results

	415 Old Newport Boulevard						455 Old Newport Boulevard					
	Wed 1/7/04			Thurs 1/8/04			Wed 1/7/04			Thurs 1/8/04		
	H/C	REG	Total	H/C	REG	Total	H/C	REG	Total	H/C	REG	Total
7:00 AM	· 0	- 5	- 5	0	7	7	0	. 7	7	0	12	12
30 AM	0	5	5	0 ·	8	- 8	0	10	10	0	13	13
8:00 AM	0	12	12	0	11	11	0	16	16	0 .	16	16
30 AM	0	14	14	0	9	9	0	16	16	0	18	18
9:00 AM	0	21	21	0	18	18	1	20	21	0	23	23
30 AM	1	26	27	0	23	23	0	23	23	0.	23	23
10:00 AM	1	33	34	1	25	26	1	25	26	0	27	27
30 AM	2	. 38	40	1	29	30	2	-26	. 28	1	27	28
11:00 AM	2	35	37	0	28 ·	28	2	25	27	2	29	31
30 AM	2	29	31	1	26	27	1	26	27	1	27	28
12:00 NOON	2	29	3,1	2	23 .	25	1	24	25.	2	29	31
30 PM	2	26	28	2 .	23	25	. 0	23	23	2	30	32
1:00 PM	2	21	23	0	26	26	0	21	21	3	30	33
30 PM	2 ·	.27	29	. 0	24	24	1	22	23	3	29	32
2:00 PM	1	29	30	0	25	25	1	24	25	2 ·	27	29
30 PM	1	27	28 -	0	29	29	1	24	25	0	23	23
3:00 PM	0	27	27	0	30	30	1 ·	20 :	21	0	23	23
30 PM	1	21	22	.2	31	-33	. 1	18	19	1	23	24
4:00 PM	0	20	20	0	31	31	1	.14	15	1 .	18	19
30 PM	0 .	. 18	18	0	32 .	32	1	11	12	1	15	16
5:00 PM	0.	18	18	0	27	27	1	9	10	0	10	10
30 PM	. 0	12	12	0	21	21	1	9.	10	0	9	9 ·
6:00 PM	0	7	. 7	0	14	14	0	5	5	0	7	7
30 PM	0	6	6	0	8	8 -	0	5	5	. 0	7	7
7:00 PM	0	6	. 6	0	8	8 -	0	4	4	0	_ 5.	5
Off-Site Spaces	0	12	12 🕾	0	12	12	0	0	0	0	.0	0
Peak Demand			52			45			28			33

H/C-Handicapped Parking

REG-Regular Parking

The 415 Old Newport Boulevard site consists of a 11,179-square-foot medical office building with 46 on-site parking spaces. In addition, 12 off-site spaces are used for employee parking. For purposes of this analysis, it is assumed that the 12 off-site spaces are fully occupied during business hours, and 12 spaces are added to the peak observed parking demand.

The 455 Old Newport Boulevard site consists of a 14,087-square-foot building, of which 10,687 square feet is medical office. The City has requested that this site be included in the parking study, and all parked vehicles be attributed to the 10,687 square feet of medical office use. There are 53 on-site parking spaces at the 455 Old Newport Boulevard site.

As shown in Table E, the highest observed parking demand at 415 Old Newport Boulevard was 52 vehicles on Wednesday and 45 vehicles on Thursday. Based on these results, LSA calculated the parking rate for the existing medical office building based on the existing square feet. Application of the peak parking demand of 52 spaces to the 11,179-square-foot medical office building results in an observed existing parking demand of 4.65 spaces per thousand square feet. The highest observed parking demand at 455 Old Newport Boulevard was 28 spaces on Wednesday and 33 spaces on Thursday. Application of the peak parking demand of 33 spaces to the 10,687-square-foot medical office use results in an observed existing parking demand of 3.09 spaces per thousand square feet.

To determine the peak parking demand of the proposed project, LSA averaged the two observed parking rates and applied the average observed parking rate of 3.87 spaces per thousand square feet to the proposed 12,500-square-foot medical office building, resulting in a forecast demand of 49 spaces. Based on this result, the parking demand is forecast to be less than the 50 spaces proposed for the project. As a result, adequate on-site parking has been provided in the project site plan.

CONCLUSIONS

Off-Site Circulation

Potential impacts to the surrounding intersections were analyzed using the methodology required by the City of Newport Beach Traffic Phasing Ordinance. The project is forecast to contribute one percent or more to the traffic volume at two intersections: Newport Boulevard/Hospital Road and Newport Boulevard/Coast Highway. Baseline and plus project level of service analyses were conducted for these two intersections for the existing plus background and existing plus background plus cumulative projects scenarios. Based on these analyses, the project is not forecast to create a significant traffic impact at either intersection.

Circulation/Parking Improvements On-Site

LSA has evaluated the on-site circulation of the proposed project using the standards set forth in Chapter 20.66 of the City of Newport Beach Zoning Ordinance. The project meets the requirements for depth of parking stalls; however, 24 parking stalls do not meet the City's requirement for an extra six inches of width next to a wall or obstruction.

The parking lot circulation was analyzed using turn radius templates from the Institute of Transportation Engineers for a medium-and large-sized passenger car. Turning and maneuvering area on the site plan is forecast to be adequate. However, it is recommended that the parking stalls at the

Attachment No. PC 3

Parking Management Plan including Valet Operation Plan



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AUG 22 2012

August 3, 2012

Oceanview Medical Investors, LLC. 441 Old Newport Blvd. Newport Beach, CA 92663

OF NEWPORT BERG

Mr. Bral:

After review of the site plan at 441 and 445 Old Newport Blvd, and doing a site check, we have determined that with our service you will have available 51 parking stalls.

As cars come in, they will have the option to self park or valet park – once self parking is full, only valet parking will be available.

Valet parking cars will be parked as follows:

There will be an 18"x24" sign that reads "Complementary Valet Parking Up Ahead" with a stand at the South side entrance. The Valet Parking Kiosk will be placed in the Southeast side of the parking lot by the stairwell (see attached Valet Parking Plan) with a "Complementary Valet Parking" sign. The Valet attendant will guide the customers to the Drop-off zone where they will be dropping off their car.

We will be parking one (1) car in the trash compartment hatched area, which can be removed temporarily when the waste company comes to pick up during business hours. We will accommodate smaller size cars in two areas within the central parking stalls (see attached Valet Parking Plan).

Emergency vehicles will have clear access thru the parking lot access aisles should and emergency occur.

Sincerely,

Jose E. Chicas President

Logistic Parking, Inc.

Logistic **Parking Inc.**A Higher Standard In Service

11271 Ventura Boulevard | Suite 103 | Studio City, California 91604 P: 818.299.7793 | F: 818.827.4946 | www.logisticparking.com

Attachment No. PC 4

Reciprocal Agreement

Parking Easement

This Document was electronically recorded by Investors Yorba Linda

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO:

Ocean View Medical Investors LLC 825 S. Barrington Avenue Los Angeles, California 90049-C/O Venture RE GROUP 2601 Hain Street, Suite 560 Irvine CA galdy Altn: John Bial Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

39.00

2007000571284 11:52am 09/19/07

Accom-1

Space above line for Recorder's use only

APN NOS. 425-271-12 and 425-271-17

This document is being recorded as an accomodation only and no liability is assumed by investors Title Company as to the validity and effect of this document.

RECIPROCAL EASEMENT AGREEMENT (PARKING) AND RIGHT OF FIRST REFUSAL

THIS RECIPROCAL EASEMENT AGREEMENT AND RIGHT OF FIRST REFUSAL entered into this first (1st) day of July, 2005, by and between Ocean View Medical Investors LLC, a California limited liability company ("Ocean View") and Sidney Soffer, an individual ("Soffer"). The intent of the parties is to create a reciprocal easement for the benefit of both parties.

EXPLANATION OF THE INTENT OF THIS RECIPROCAL AGREEMENT

In order for Ocean View to enjoy full use of its property, it is necessary to convert the present "office" spaces to "Medical Offices". Because of the Newport Beach Code Requirements pertaining to parking that were revised for Medical Offices that took place and became effective during Ocean View's Escrow period for the purchase of property "B", Ocean View now has insufficient parking for the conversion from "Offices" to "Medical Offices". Soffer's property "A" has sufficient "legal" parking for Sid's Restaurant but insufficient parking from a practical standpoint. In the past, parcel "B" had sufficient required parking for its daytime hours of operation and the offices were closed at night and therefore did not use its parking except for the daytime hours. Soffer, on the other hand, had little need for additional daytime parking but had a great need for additional nighttime parking. Soffer's patrons, in most cases without owner's permission, used the empty parking spaces of parcel "B" and also the parking spaces across the

\$ 515

street as well as the available on street parking on Old Newport. To accommodate the additional parking requirements for Ocean View's conversion to "Medical Offices", Ocean View has proposed through this agreement to have the use for parking the additional required vehicles on the rear of Soffer's "A" lot during the daytime hours. In exchange, Ocean View offers the nighttime use of its unused parking for Soffer's use. In addition, Ocean View has offered and proposes through this agreement to pave, provide required lighting and maintain the now unused and undeveloped rear of property "A". Ocean View's proposal is for a period of forty-five (45) years. This will encumber Soffer's property beyond any reasonable foreseeable time, but it has been discussed between Ocean View and Sid Soffer that the best future use for Soffer's "A" property would be to combine it with one of the adjoining properties. The property to the North is completely developed with a new building and has all of the required parking, and although has offered to purchase Soffer's "A" parcel, because of the additional requirement for parking on Ocean View's parcel "B", Ocean View would be the logical purchaser. It is likely, and expected that Soffer would therefore receive more than market value from Ocean View. It is foreseen by Soffer that the additional money above fair market value that Ocean View would pay Soffer should be fair compensation for Soffer's inability to further develop his underdeveloped property during the forty-five-(45) year period that Ocean View proposes.

WITNESSETH:

WHEREAS, Ocean View is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit B attached hereto and incorporated herein (said parcel being hereinafter referred to as "Parcel B"); and

WHEREAS, Soffer is the owner of a fee simple estate in that certain parcel of real property located in the County of Orange and State of California more particularly described in Exhibit A attached hereto and incorporated herein (said parcels being hereinafter referred to as "Parcel A") which Parcel B is adjacent to Parcel A; and

WHEREAS, the parties hereto desire to enter into this Reciprocal Easement Agreement for the joint use of walking, parking, and driving areas in Parcel A and Parcel B, as more particularly shown on the site plan attached hereto as Exhibit C (the "Site Plan") and for the joint rights of access to, and ingress and egress and surface water drainage over and across such areas;

NOW THEREFORE, in consideration of the mutual benefits to be realized by such joint use, the mutual agreements set forth herein the parties hereto do hereby agree as follows:

1. Ocean View does hereby establish, give, grant, and convey to Soffer, his respective successors, successors-in-title, and assigns, and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel A for passage and use for the purpose of ingress and egress to and from Parcel A over Parcel B, and for the purpose of walking upon and driving and parking vehicles upon and across all those sidewalks, entrances, drives, lanes, and parking areas in Parcel B which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area shown on the Site Plan which non-exclusive easement is limited

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solely to the hours between 7:00 p.m. and 3:00 a.m. each day.

- 2. Soffer does hereby establish, give, grant, and convey to Ocean View, its successors, successors-in-title, and assigns and the tenants, customers, employees, and invitees of such parties, a non-exclusive easement appurtenant to Parcel B for passage and use for the purpose of ingress and egress to and from Parcel B over Parcel A for the purpose of walking upon and driving and parking for twenty-four (24) full-sized vehicles upon and across all those sidewalks, entrances, drives, lanes, repair the wall, and parking areas in Parcel A which are now or may hereafter from time to time be used for pedestrian and vehicular traffic and parking as is not within the building area, if any, shown on the Site Plan and is limited to the rear portion of Parcel A shown on the site plan.
- 3. In connection with the grant of the reciprocal easements contained herein, and in order to make such easements effective for the purposes contained, Ocean View and Soffer do further agree as follows:
 - (a) All buildings constructed on Parcel B shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel B." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation without affecting the reciprocal parking number available to both parcels, Parcel B shall contain paved parking spaces for at least 35 full-sized automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entrance ways on Parcel B which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel B, subject to closings or takings by governmental authorities.
 - (b) All buildings constructed on Parcel A shall be constructed entirely within the area shown on the Site Plan as "Building Area -Parcel A." At all times during the term of this Agreement except as long as there is sufficient parking as per City code and regulation and without affecting the reciprocal parking number available to both parcels, Parcel A shall contain paved parking for at least 24 full slzed automobiles and passenger trucks, subject to reduction in such number by virtue of condemnation or eminent domain. All driveways and entranceways on Parcel A which are crosshatched on the Site Plan shall be constructed and maintained by the owner of Parcel A, subject to closings or takings by governmental authorities.
 - (c) No party hereto shall, at any time prior to the termination of the easements herein granted, erect or construct, or cause to be erected or constructed, any fence, wall, curb, or other barrier which would in any manner interfere with or restrict the full and complete use and enjoyment by any party of the easements herein granted provided, however, that either party may construct or maintain a fence, wall, curb or other barrier on the common boundary line between Parcel A and Parcel B so long as there remains other methods of ingress and egress to both Parcel A and Parcel B which will ensure the full and complete use and enjoyment of the easements herein granted.

- (d) Ocean View does hereby agree to pave the rear portion of Parcel A for the purpose of creating additional parking stalls, to be used by Parcel B. To the extent the City requires additional lighting for the rear portion of Parcel A, Ocean View shall pay for the cost of additional lighting.
- 4. Each party hereby grants and conveys to the other party, its successors, successors-intitle, assigns, or tenants, at any time and from time to time during the term of this Agreement, the right, but not the obligation, to enter upon the other party's parcel or parcels for the purpose of constructing, installing, and maintaining the parking lot, driveways, sidewalks, and lighting as more particularly shown on the Site Plan.
- 5. The parking lot, sidewalks, driveways, and lighting located on Parcel A and Parcel B shall be maintained in good order and repair by the respective owners of such Parcels at all times during the term of this Agreement, including striping, snow, ice and trash removal, except for the rear portion of Parcel A, as shown on the Site Plan, to be maintained by the owner of Parcel B. The owner of each of such Parcels shall keep the parking lot located thereon lighted during the hours of business maintained by any tenant or business enterprise located on such Parcel or the other Party's Parcel.
- 6. The restrictions and agreements granted herein shall terminate upon the earlier to occur of (i) January 1, 2050; or (ii) expiration of twelve (12) months after the last day on which Parcel A is used for a commercial building (it being understood that construction of a medical office building shall constitute a commercial office building use) and the entry of a final order by a court of competent jurisdiction that such easements, restrictions, and agreements are no longer necessary for the protection of the respective property owners considering the uses then being made of the respective parcels.
- 7. The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Reciprocal Easement Agreement by the parties hereto. The easements provided for herein shall run with the land and shall constitute a use for reciprocal benefits to and burdens upon Parcel A and Parcel B. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of Parcel A or Parcel B, or any of them, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by action for specific performance, it being agreed by both parties hereto that an action for damages would not be an adequate remedy for a breach of this Reciprocal Easement Agreement.
- 8. This instrument is not intended to, and should not be construed to dedicate the said easement areas to the general public, nor shall this instrument be construed to restrict the use and development of Parcel A or Parcel B, except as stated herein. Without limiting the generality of the foregoing and subject to the limitations contained herein, Ocean View and Soffer shall have the right to expand, alter, modify, or demolish all or part of the buildings

they propose to construct on Parcel A or Parcel B or develop said parcels in any manner they see fit, it being the intent of this instrument to grant reciprocal easements over parking, drives, sidewalks, and common areas as they exist from time to time without limiting the right of Ocean View or Soffer to alter, demolish, or redevelop said areas.

- Soffer shall not sell or agree to sell Parcel A without first offering Parcel A to Ocean View. The word "sell" shall include any transfer, conveyance, assignment of all or any portion of Parcel A. Before Soffer sells or agrees to sell Parcel A, Soffer shall offer (the "First Offer") to sell Parcel A to Ocean View, in writing and on the terms and conditions substantially identical to those proposed for the sale of the Property to a third party. The First Offer shall include all the material terms and conditions contained in that which is being offered in the proposed sale to the third party including, but not limited to, the proposed purchase price (the "Proposed Price"), down payment, timing, and the name of proposed purchaser. Ocean View shall have 60 days from the date of the First Offer ("the Acceptance Period) to accept the First Offer by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period which acceptance shall be at the lesser of the Proposed Price or 115% of the Appraised Price (as hereinafter defined). If Ocean View rejects the First Offer and Soffer enters into negotiations with a third party and is otherwise willing to enter into an agreement with that party on terms substantially less favorable to Soffer than those contained in the First Offer, then Sofffer shall offer to sell Parcel A to Ocean View on those new terms by giving Grantee written notice (the "Second Offer") and Ocean View shall once again have the right to accept or reject as described above. In order to determine the "Appraised Price", within ten (10) days of the making of the First Offer (and the Second Offer, if applicable) Soffer and Ocean View shall each appoint a licensed appraiser with not less than seven (7) years of experience appraising similar properties in the southern California area. The two appointed appraisers shall, within (10) days thereof together choose a third independent appraiser with similar qualifications. Such third appraiser shall, within 20 days of his/her appointment, determine the fair market value of Parcel A and such value shall be the "Appraised Price". Soffer shall also have the right to "put" Parcel A to Ocean View at any time by written demand (the "Put Letter") to Ocean View to purchase Parcel A at a purchase price chosen by Soffer (the "Put Price"). Ocean View then would elect to determine the Appraised Price as described above, Ocean View shall have 60 days from the date of the Put Letter ("the Acceptance Period) to determine the Appraisal Price by delivering to Soffer the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period, which acceptance shall be at the lesser of the Put Price or 115% of the Appraised Price.
- 10. In the event during the duration of this Reciprocal Easement Agreement, the City of Newport Beach revises the parking requirement of 5:1,000 for medical parking to 4:1,000 for medical parking; after confirmation of the City of Newport Beach Parking Requirement as referenced above, Ocean View would submit, in writing, to Soffer notifying Soffer of the change; which at that time, at the option of either party, this Reciprocal Eastment Agreement can be cancelled.
- 11. Upon the written request of the owner of any of the Parcels, the then owner of any Parcel, or any portion thereof, shall execute and deliver, within ten (10) days after receipt of

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such request, a certificate certifying that there are no known defaults on the part of any party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy it and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement, or if there are, specifying the particulars of such setoffs or defenses.

- 11. This Agreement shall be recorded in the public records of Orange County, California and shall be prior in title to any deed of trust which is now or may hereafter be placed upon any of Parcel A and Parcel B.
- 12. The recitals and explanation of the intent in this Agreement are intended solely for reference and do not modify, explain or construe any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Easement Agreement as of the date first above written.

"OCEAN VIEW"

Ocean View Medical Investors LLC, a California limited liability company.

Name: John Bral

Lis: Managing Meinber

Sulm

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EXHIBIT "A" PARCEL A

The real property located in the County of Orange, California, commonly known as 445 Newport Boulevard, Newport Beach, described as follows:

PARCEL 1:

Lot 13 and the Southwesterly 3.27 feet of Lot 12 in Block 9 of "Tract No. 27, Boulevard Addition to Newport Heights" in the City of Newport Beach, as shown on a map recorded in book 9, page 26 of Miscellaneous Maps, Records of Orange County, California.

PARCEL 2:

That portion of the Southeasterly half of the 40-foot road adjoining said Lots 12 and 13 on the Northwest, as abandoned by the order of the Board of Supervisors of Orange County on June 25, 1949, bounded Northwesterly by the Northwesterly prolongation of the Northwesterly line of the Southwesterly 3.27 feet of said Lot 12 and bounded Southwesterly by the Northwesterly prolongation of the Southwesterly line of said Lot 13.

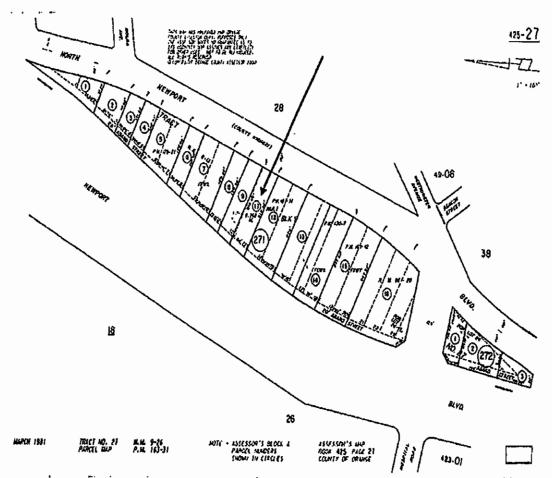


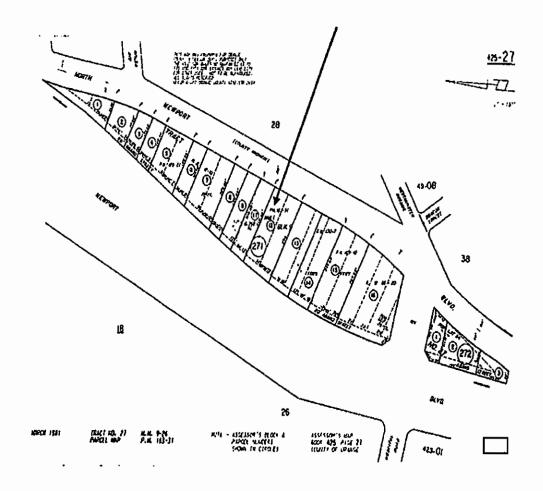


EXHIBIT "B" PARCEL "B"

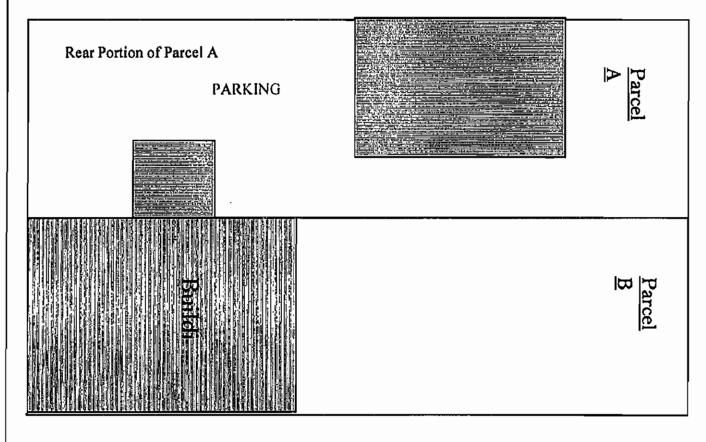
All of that certain real property situated in the City of Newport Beach, County of Orange, State of California, described as follows:

Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps, in the Office of the County Recorder of said County.

APN 425-271-12







STATE OF CALIFORNIA	}
COUNTY OF LOS ANGELES) 99.)
me on the basis of satisfactory evidenthe within instrument and acknowle his/her/their authorized capacity(s),	ore me,, a Notary mia, personally appeared, personally known to me (or proved to ence) to be the person(s) whose name(s) is/are subscribed to dged to me that he/she/they executed the same in and that by his/her/their signature(s) on the instrument the of which the person(s) acted, executed the instrument.
WITNESS my hand and off	icial seal.
APRIL M. SEVILLA COMM. #1637638 m Notary Public California ORANGE COUNTY My Comm. Exp. Dec 23, 2008	My Game. Exp. 9 or 21, 1965
	Notary Public
NEVADA STATE OF CALIFORNIA CLARK COUNTY OF L OS ANGELES)) ss.)
Motary Public in and for the State of State of the State of the within instrument and acknowled his/her/their authorized capacity(s);	of California, personally appeared Sidney Lester personally known to me for proved to ence) to be the person(s) whose name(s) is/are subscribed to edged to me that he/she/they executed the same in and that by his/her/their signature(s) on the instrument the of which the person(s) acted, executed the instrument.
WITNESS my hand and off	icial seal.
- 	Notary Public
•	NOTARY PUBLIC STATE OF NEVADA County of Cirk MIGUEL, ORTIZ

Attachment No. PC 5

Draft Resolution for Denial

RESOLUTION NO. 2012-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING CONDITIONAL USE PERMIT NO. 2011-011 FOR A REDUCTION OF THE OFF-STREET PARKING REQUIREMENT AND TO UTILIZE AN OFF-SITE PARKING LOT FOR AN EXISTING COMMERCIAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2011-056)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by John Bral, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
- 2. The applicant proposes a conditional use permit to reduce the required off-street parking and to utilize an off-site parking lot. The project proposes to utilize the recently renovated commercial office building (11,540 quare feet) for medical office and to provide 51 of the 56 required parking spaces (a reduction of 5 required spaces). Forty-four spaces would be on-site and seven spaces would be provided on the abutting property to the north at 445 Old Newport Boulevard which is developed with a vacant restaurant.
- 3. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
- 4. The subject property is not located within the coastal zone.
- 5. A public hearing was held on September 6, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

Pursuant to Section 20.40.100 B. (Off-Site Parking), Section 20.40.100 A. and 20.40.110 B., the Planning Commission may approve or conditionally approve a conditional use permit for these types of parking requests only after first making all of the findings per Section 20.52.20 (Conditional Use Permits). In this case, the Planning Commission was unable to make the required findings.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby denies Use Permit No. UP201-011.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 6th DAY OF SEPTEMBER, 2012.

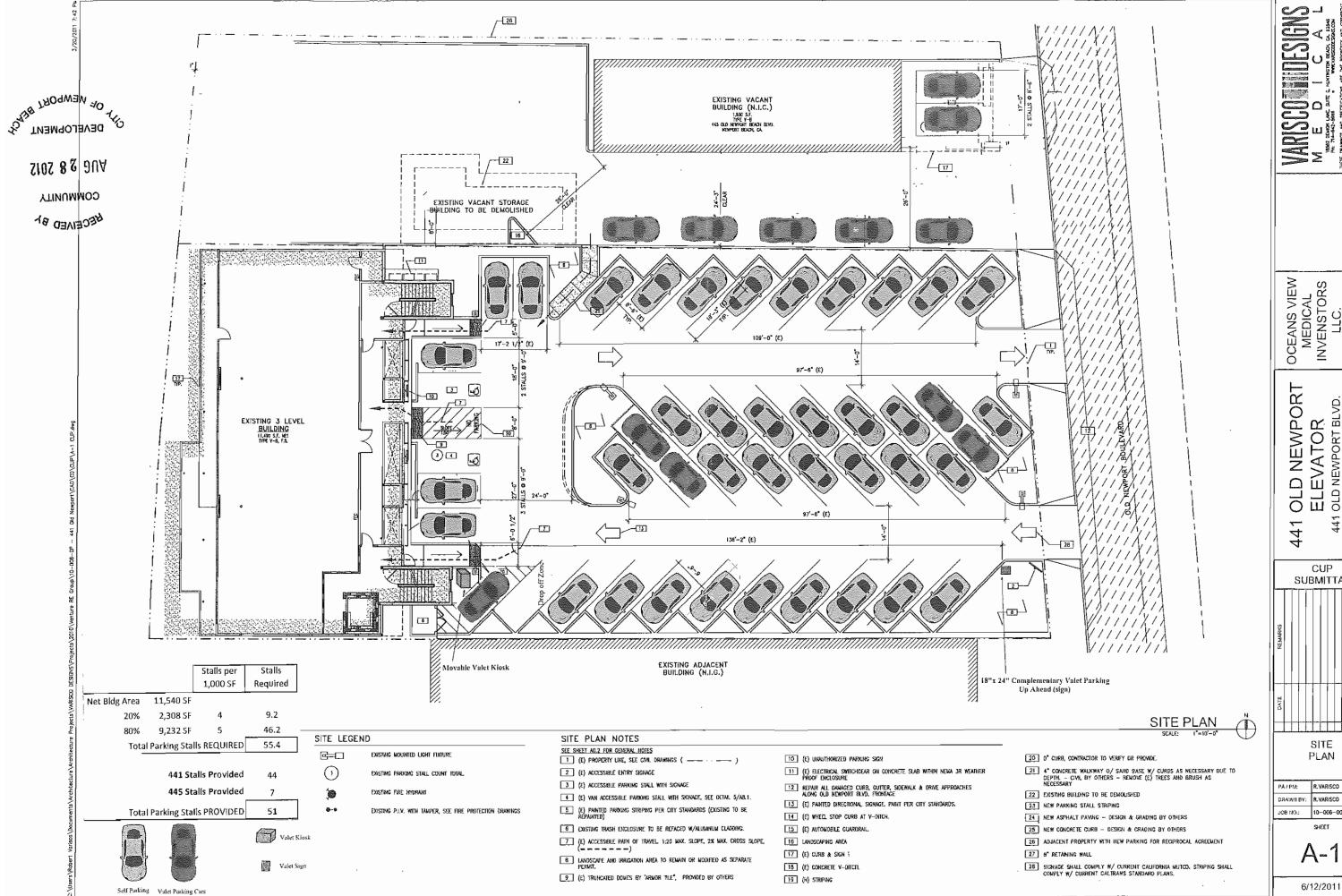
ATES.
NOES:
ABSTAIN:
ABSENT:
BY:
Michael Toerge, Chairman
BY:
Fred Ameri Secretary

Tmplt: 12/15/2011

A \ / E O .

Attachment No. PC 6

Plans



OCEANS VIEW MEDICAL INVENSTORS LLC.

1 OLD NEWPORT ELEVATOR 41 OLD NEWPORT BLVD. NEWPORT BEACH, CA.

CUP SUBMITTAL

SITE PLAN

PA / PM:	R.VARISCO	
DRAWN BY:	R.VARISCO	
ON BOL	10-006-00	
CHIET		

ADDITIONAL MATERIALS RECEIVED

Old Newport Medical Office Building

441 Old Newport Boulevard Use Permit No. 2011-011



Planning Commission Public hearing September 6, 2012 STAFF PRESENTATION



Introduction



- Reduce off-street parking requirement and utilize off-site parking lot
 - Existing 23,080 sq. ft. lot developed with a 11,540 sq. ft. commercial office building currently being renovated
 - Medical office with 51 of the 56 required parking spaces, providing 7 on the abutting property at 445 Old Newport Blvd

Vicinity Map





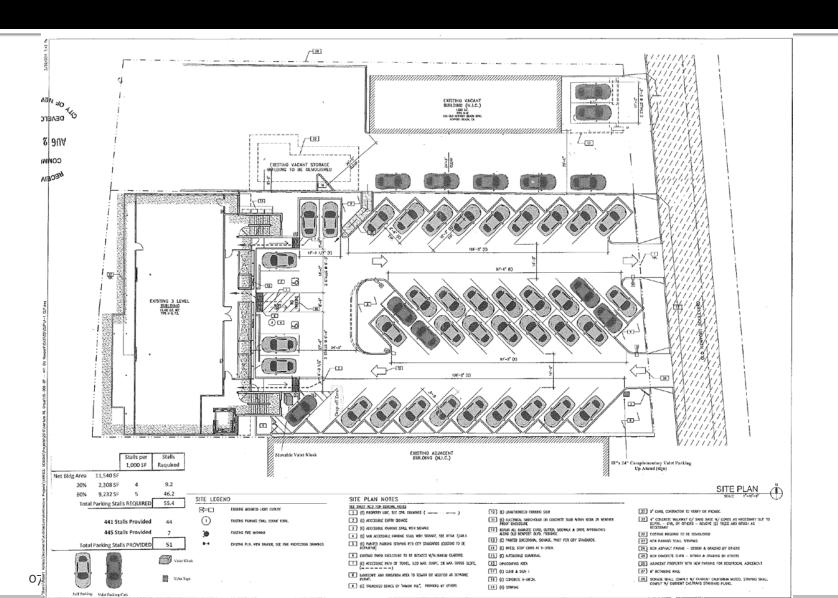
Project Details



- Parking demand of similar offices on Old Newport appears to be less than Zoning Code requirement
- Full valet service available, valet only for off-site lot
- Access and Circulation of on-site and off-site parking approved by City Traffic Engineer

Site Plan





Conditions of Approval



- Ensure 51 parking spaces is adequate and circulation/access of off-site lot and valet operation sufficient for medical use
 - Final valet operation/circulation requires approval by the City Traffic Engineer
 - 6 month review of parking management plan
- Changes to use or access of off-site lot requires additional review with spaces provided elsewhere or use must be reduced

CEQA Review



 Categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, Class 1 (Existing Facilities)

Recommendation



- Conduct a public hearing
- Adopt draft Resolution Approving Conditional Use Permit No. UP2011-011 subject to the findings and conditions.



For more information contact:

Melinda Whelan 949-644-3221 mwhelan@newportbeachca.gov www.newportbeachca.gov



Richard J. Haskell, M.D., F.A.C.C.

Desmond D. Levin, M.D., F.A.C.C.

Bonnie J. Gainer, M.D., F.A.C.C.

Neala J. Hunter, M.D., F.A.C.C.

Jeffrey Bruss, M.D., F.A.C.C.

Carey L. O'Bryan IV, M.D., F.A.C.C.

Michael Panutich, M.D., F.A.C.C.

Jennifer Jessen, N.P.- C

Jean Carlos, N.P.

415 Old Newport Boulevard • Suite 200 • Newport Beach • California 92663
Phone: (949) 548-9611 • Fax: (949) 548-9958
www.newportheart.com

Item 3a: Additional Materials Received
Planning Commission - September 6, 2012
PA2011-056

September 4, 2012

Community Development Department Planning Division 3300 Newport Boulevard, Building C Newport Beach, Ca 92663

RE: September 6, 2012 Meeting -Agenda Item #3, 441 Old Newport Medical Office Building

Planning Commissioners,

The developers of **441 Old Newport Road** are asking you to allow them to use this building for medical office space although they do not meet the parking requirements for such use. We would ask you to deny this request.

We constructed, own and operate the medical office building at **451 Old Newport Road** and actually decreased the size of that building to fully comply with the city's parking requirements for medical office use. We also own the constructed, own and operate the building at **455 Old Newport Road**. Although we would like to operate that site as purely medical office space, due to the city parking requirements, we are forced to operate with a mix of medical and general office use. In March, 2012 we asked to change the configuration of that limited use, but were still required to maintain the mix of medical and non-medical based on the parking requirements. (Please see the attached letter dated March 28, 2012 signed by Mr. Gregg Ramírez, Senior Planner, City of Newport Beach.)

We ask that you apply the same restrictions to the development at 441 Old Newport that you have applied to our projects. Given the available parking at this site, it should also be required to serve as a mixed use site providing general office space along with the medical office space.

We are also concerned that to achieve even a mixed use at this 441 site, the developer is relying on a valet service and off-site parking to comply with the parking requirements. Even with this complicated and expensive plan they still do not have the adequate number of parking spaces for medical use only.

And we wonder how the city will monitor this valet parking scheme. If the owner decides it is too impractical and expensive to operate and discontinues using it, how will the occupy mix of the building be changed or controlled? This off-site parking is at 445 Old Newport which is a dilapidated, debris strewn area. Vandals have recently broken the windows and we wonder why the city has not condemned this property or at least ordered it fenced to protect the public; not consider it as a viable parking lot.

Melinda Whelan, the city planner on this case recently told me she thinks the parking ratio for medical buildings is too high based on her observations of local properties and suggests this 441 property could approved with a lower ratio. We believe her research is flawed. She observed our 415 building during non-business hours; when our doctors are not seeing patients, the parking lot is understandably not crowded. During business hours all parking spaces are full. The study of our 455 building was non-representative as that building is only 33% occupied. Of course you would have available parking when over half of the building is vacant. The other building she studied at Orange and Old Newport is not fully leased at the time either; once again a reasonable expectation of available parking spaces. When these properties are fully leased, the current parking requirements prove to be necessary. The ratio should not be adjusted for the 441 site.

Granting this application would be unfair to the other businesses in the area that have complied with the city's requirements. And, the only place for the overflow customers at the 441 site to park will be to trespass on the other parking compliant sites in the area.

Thank you,

Richard J. Haskell MD, Sandra Haskell, Desmond Levin MD, Diane Levin

415 & 455 Old Newport Road, Newport Beach, CA 92663 949-548-9611



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229

www.newportbeachea.gov

March 28, 2012

Item 3a: Additional Materials Received
Planning Commission - September 6, 2012
PA2011-056

Sandie Haskell 255 Evening Canyon Road Corona Del Mar, CA 92625

RE: 455 Old Newport Boulevard - Medical Office Space Allocation

Dear Ms. Haskell,

Based on our records, the existing 14,087 square foot (gross) building is allowed to be occupied by a mix of medical and general office uses as follows:

- 10,265 sq. ft. (gross) medical or other uses requiring equal or less parking than 1/200 (gross).
- 3,822 sq. ft. (gross) general office or other uses requiring equal or less parking than 1/250 (net).

This allocation is based on the existing number of parking spaces (57) and the uses that have historically occupied the building. Unoccupied medical office space will not be counted towards the maximum as long as it remains unoccupied. Prior to the issuance of tenant improvements to convert the credit union space to medical office, a signed letter stating the status of the improved medical office space will be required. This status must specify that it is vacant and the area (gross square footage) of the vacant area. Additionally, a business license will not be issued for new tenants over the floor are for medical office as indicated above. The Planning Division will use your letter and future tenant improvement plans to track floor area of existing and future uses.

Sincerely,

Gregg Ramírez, Senior Planner

949-644-3219

gramirez@newportbeachea.gov

To: Subject: Planning Commissioners Additional Materials Received

Additional Materials Received Planning Commission September 6, 2012

Item No. 1a: Draft Minutes of August 23, 2012

Item No. 3b: 441 Old Newport Medical Office Building - PA011-056

----Original message----

From: Jim Mosher < jimmosher@yahoo.com>

To: "Houston, Rob" < RHouston@newportbeachca.gov >

Sent: Thu, Sep 6, 2012 17:54:55 GMT+00:00

Subject: Written comments on Sept. 5, 2012 evening Planning Commission agenda

To whom it may concern:

Regarding the posted packet for the Planning Commission's September 5, 2012 regular evening agenda I have the following observations regarding the two items I've reviewed.

Item 1 ("Minutes of August 23, 2012") --

On page 3, in the first full paragraph under "ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT":

- 1. I suspect "a Zone Code Amendment" was meant read "a ZONING Code Amendment"
- 2. In "the proposed Telecomm ordinance" I believe the customary spelling is "Telecom" with a single "m" as used in the staff report for the afternoon Study Session.

===

Item 3 ("441 Old Newport Medical Office Building (PA2011-056)") --

Comment 1: On page 3 of PC 4, the "Reciprocal Parking Easement Agreement" (p. 29 of the 41 page PDF), the final two lines of Condition 2 appear to say Ocean View Medical Investors is being given the right to park ONLY in the "rear portion" of the Soffer property, which appears to be the currently unpaved area designated on Exhibit C (p. 35 of the staff report). This differs from the plan shown on the last page of the report (p. 41) which also shows 5 cars parallel parked in the paved front area of the Soffer property (that the aerial photo on p. 2 seems to show currently striped for 5 or 6 diagonal spaces).

Comment 2: If the aerial photo is correct and if the vacant restaurant were to reopen in its current configuration, then under the plans shown in the staff report there would appear to be NO paved parking spaces available for the restaurant use during the hours when the proposed medical office is operating at full capacity.

Comment 3: Although the report says the Parking Management Plan creates no trainic nazards, it appears cars
have to use Old Newport Boulevard to move between the two parking lots. Wouldn't it be better and safer to
establish and require an on-property connection through which cars could move without using the public road?
===
Vours
Yours,
Jim Mosher

RANEY ZUSMAN MEDICAL GROUP

CARDIOVASCULAR AND THORACIC SURGERY

447 OLD NEWPORT BOULEVARD, SUITE 200 NEWPORT BEACH, CALIFORNIA 92663

AIDAN A. RANEY, M.D.
DOUGLAS R. ZUSMAN, M.D.
COLIN I. JOYO, M.D.
JACQUES KPODONII, M.D.
ANTHONY D. CAFFARELLI, M.D.

September 6, 2012

City of Newport Beach Planning Commission City Council Chambers 3300 Newport Boulevard Newport Beach, CA 92663 TELEPHONE (040) 050-3350 Facsimile (040) 050-1874

RECEIVED BY

COMMUNITY

SEP 06 2012



RE: September 6, 2012, Planning Commission Agenda Item # 3 – 441 Old Newport Medical

Office Building (PA2011-056)

Site Location: 441 Old Newport Boulevard

Dear Commissioners:

We respectfully request the Planning Commissioners deny the above referenced application request for a conditional use permit to reduce the required off-street parking and utilize an off-site parking lot. We are requesting a denial based on the following information:

- 1. The staff report indicates that the property at 441 Old Newport Boulevard is 11,540 square feet. However, the owners posted their property "for sale" on an internet website (www.loopnet.com) showing the square footage of the building at 14,953, a discrepancy of 3,413 square feet. Please see exhibit "A". Furthermore, they are advertising the listing as "Medical" office space. Our representative spoke with Melinda Whelan on Tuesday, September 4, 2012. Melinda confirmed that they only have an approved permit for "spec" space not "medical" office space. We believe their square footage needs to be verified by the City of Newport Beach to accurately understand how many parking spaces will be required. If, indeed, the staff report square footage is too low, the parking space requirement could be even greater than what is currently proposed.
- 2. According to the staff report (page 3, Reduction of Off-Street Parking, #1), the applicant provided sufficient data to indicate that the parking demand is less than the required number of spaces, however no parking study was submitted by the applicant. Ms. Whelan said that she traveled to the site and observed parking over a two-day period and that there appeared to be enough parking available. Our representative explained that the observation did not take into consideration the current leasing conditions of the adjacent properties, none of which are leased to capacity at the current time. Also, the observation was not performed at the busiest time-of-day, when parking utilization is highest. We believe the applicant should have provided a valid parking/traffic report, by a certified traffic engineer to the City. The traffic/parking report should take into consideration the

- parking requirements if all office buildings are at full capacity, not just the parking conditions on a given day.
- 3. The staff report indicates that the applicant has an agreement to provide seven (7) off-site spaces to be "valet only" parked on the adjacent property at 445 Old Newport Boulevard. The staff report shows a "reciprocal easement agreement" between Ocean View Medical Investors, LLC and Sidney Soffer from July, 2005.
 - a. First, Sidney Soffer, died in 2007 and the property at 445 Old Newport (to be used for off-site parking) is currently in bankruptcy proceedings. We believe that parking easement agreement is no longer valid and enforce as it was filed prior to Mr. Soffer's bankruptcy action. Incidentally, the bankruptcy action was filed by Mr. Soffer, on the morning the property at 445 Old Newport Boulevard was due to be auctioned by the County of Orange. We were at the courthouse that morning to potentially bid on the property.
 - b. We believe it is highly unlikely that the applicant will continue to utilize a valet service, as it is a very expensive parking option. Furthermore, we are concerned that the City of Newport Beach will not be able to adequately monitor whether or not they are using a valet service, thereby placing the burden on the surrounding businesses in the area.
 - c. We firmly believe that our parking lot at 447 Old Newport will be impacted if parking is not available in the lot at 441 Old Newport. Please see exhibit "B".
- 4. The reciprocal easement agreement indicates that "Ocean View now has insufficient parking for the conversion from "Offices" to "Medical Offices". Soffer's property "A" has sufficient "legal" parking for Sid's Restaurant but insufficient parking from a practical standpoint." They mutually agree that they can use each others parking spaces as their usage (day v. evening) does not conflict. The premise of this agreement is contingent on Sid Soffer"s restaurant being a viable active business. And, that it will continue as a restaurant in the future. We have been located adjacent to Sid Soffer's property for the past eight years. It is an abandoned, dilapidated property that was long ago shut down by the health department. We believe there is no chance Mr. Soffer's estate will have the opportunity to re-open this structure as a restaurant. Please see exhibit "C". If this property is sold it will most likely be leveled and re-built as office/medical office space.

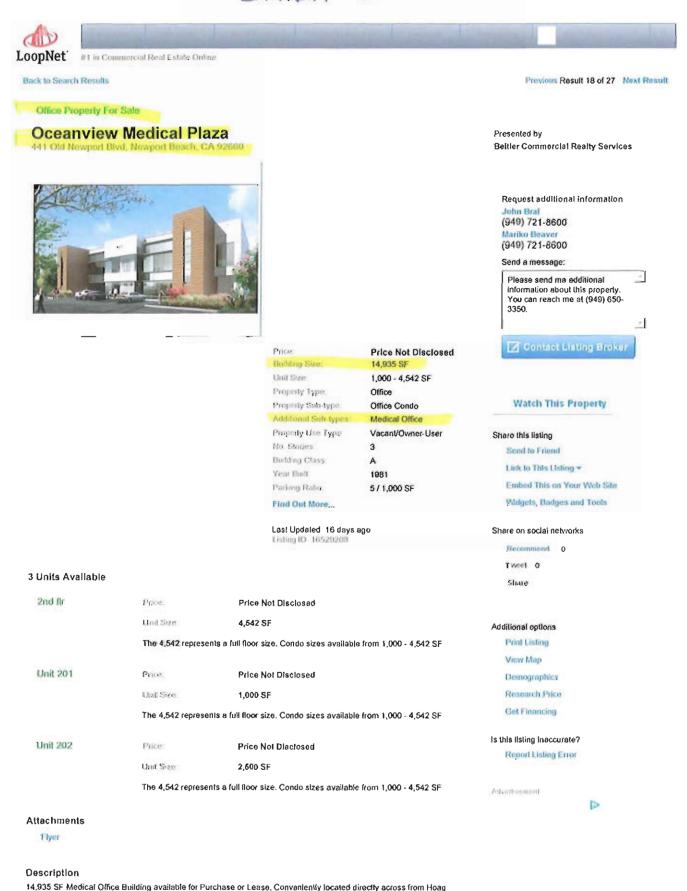
As owners of the property at 447 Old Newport Boulevard, we complied with the parking requirements set forth by the City of Newport Beach. We wanted to build out more leasable space but we were restricted from doing so because we could not provide enough on-site parking spaces. We are requesting that the applicant be held to the same requirements for parking as the other businesses in the area.

Thank you for your time.

Best regards,

Aidan A. Raney, M.D. Ann Raney

EXHIBIT "A"



Hospital (less than 0.5 Miles), 3 Story Building. Only 1 floor available for ownership.





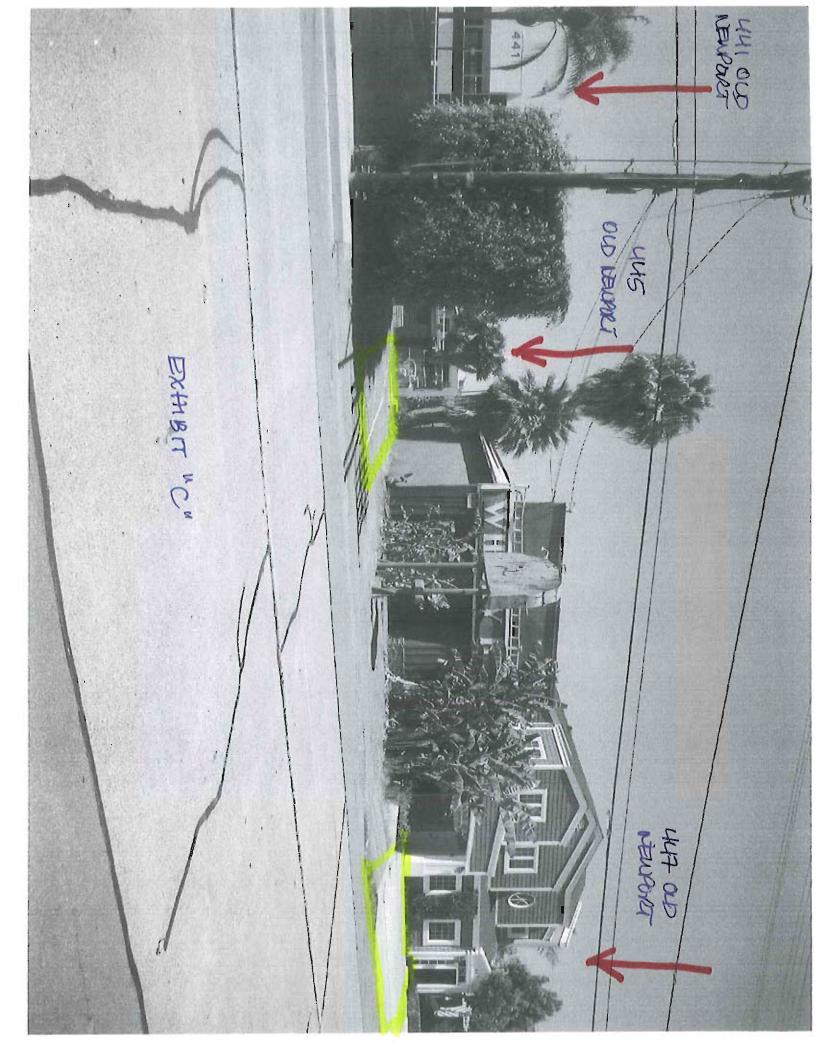












CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 6, 2012 Meeting Agenda Item <u>4</u>

SUBJECT: Evensen Residence - (PA2012-089)

SITE

LOCATION: 3225 Ocean Boulevard

Variance No. VA2012-003

APPLICANT: Wun Sze Li c/o Brion Jeannette Architecture

PLANNER: Rosalinh Ung, Associate Planner

(949) 644-3208, rung@newportbeachca.gov

PROJECT SUMMARY

A Variance request to allow the construction of a 3-level, single-family residential unit to encroach 10 feet into the required 10-foot front yard setback at the lower subterranean level which will not be visible from Ocean Boulevard.

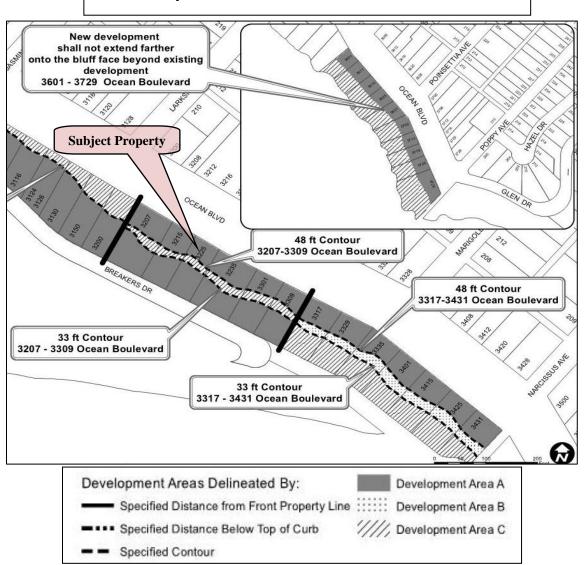
RECOMMENDED ACTION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Variance No. VA2012-003 and finding the project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential	Single-Unit Residential-	Single-unit residential
	Detached (RS-D)	Bluff Overlay (R-1-B)	dwelling
NORTH	Single-Unit Residential	Single-Unit Residential-	Single-unit residential
	Detached (RS-D)	Bluff Overlay(R-1-B)	dwelling
SOUTH	Breakers Dr. & Parks &	Breakers Dr. & Parks &	Breakers Dr. & CDM State
	Recreation (PR)	Recreation (PR)	Beach
EAST	Single-Unit Residential	Single-Unit Residential-	Single-unit residential
	Detached (RS-D)	Bluff Overlay (R-1-B)	dwelling
WEST	Single-Unit Residential	Single-Unit Residential-	Single-unit residential
	Detached (RS-D)	Bluff Overlay (R-1-B)	dwelling

Map B-6 Ocean Boulevard/Breakers



INTRODUCTION

Project Setting

The subject property is approximately 6,804 square feet in size. The rectangular-shaped property is located between Ocean Boulevard to the north and Breakers Drive to the south, with an approximately 50-foot wide City right-of-way between the northern property line and Ocean Boulevard. The right-of-way area consists of a lawn adjacent Ocean Boulevard, a short wall, and a sloped landscaped area adjacent to the property. To the west and east are existing single-family residential developments. South of Breakers Drive is the Corona Del Mar State Beach.

The subject property slopes from Ocean Boulevard down to the south at a slope ratio of approximately 2:1 for approximately 60 feet, and transitions to an approximate 1:1 slope that extends approximately 35 feet downward toward Breakers Drive. The lower portion of the site is relatively flat, at the 13-foot contour line. The total slope height is 76 feet, measured from north of the site at Ocean Boulevard to south of the property at Breakers Drive.

The subject property is currently developed with an existing 2-1/2-level single-family residential unit constructed at the top of the bluff. The existing dwelling unit is situated approximately between the 75-foot elevation contour line down to the 56-foot elevation contour. A one-story, 3-car garage structure, a carport, a fire pit and barbeque are located below the bluff on the level area adjacent to Breakers Drive. An existing wood staircase located on the bluff face connects to the main residence and the garage below, and this area remains largely undisturbed and vegetated. Vehicular access is provided from Breakers Drive. Pedestrian access is available via an existing wooden staircase from Ocean Boulevard.

Project Description

The applicant proposes to demolish the existing 2,023-square-foot, 2-1/2-level, single-family residence and a 1,346-square-foot detached, 3-car garage, and construct a new 3,880-square-foot, 3-level, single-family residence at the top of a coastal bluff, and a 914-square-foot detached, 3-car garage, and an exercise room with a 610-square-foot roof deck on top at the bottom of the bluff. The lower level of the new residence is proposed to encroach 10 feet into the 10-foot front yard setback and requires approval of a Variance.

New improvements in the front yard of the new residence consist of an open patio, with raised planters and barbeque. Also included is an 8-foot high retaining wall at the property line with a 42-inch protective guardrail on top, and a new stairway constructed in the same location as the existing staircase to provide pedestrian access from Ocean Boulevard to the main entrance of the house.

The applicant also proposes a funicular to be located along the west side of the property to provide a secondary means of access between the proposed residence and the lower garage structure. The existing stairway connecting the main dwelling to the garage will be maintained with the top portion to be reconstructed. The stairway on the east side of the main structure will be reconstructed to provide access from the front patio, to the lower-level deck and the back stairway.

Background

On December 24, 2009, an Approval-in-Concept (AIC) was issued by the City to allow the subject property to be redeveloped with a 4,733-square-foot, four-story single-family residence connected via a tunnel and elevator to a 1,084-square-foot, one-story, 3-car garage. The California Coastal Commission (CCC) denied the application because the proposed residence would extend beyond the existing building footprint, down to the 48-foot contour line. The CCC determined that the development should be within the existing building footprint, or above the 56-foot contour line, despite the City's Bluff Overlay District which allows development down to the 48-foot contour line. Additionally, the Bluff Overlay District establishes that development proposed on the lower portion of the site can go no higher that the 33-foot contour. In addition, the CCC objected to the height of proposed garage, and requested that the garage be reduced in size and height.

In response to the CCC decision, the applicant redesigned the project and eliminated one floor level in the main dwelling unit and the second floor of the garage structure. To compensate for the loss in floor area, the applicant designed the lower level to encroach 10 feet into the required 10-foot front yard setback which requires a Variance. This encroachment will be subterranean and will not be visible from Ocean Boulevard.

DISCUSSION

Analysis

General Plan & Local Coastal Plan

The proposed project will not change the density or use of the subject property and is consistent with the designation "Single Unit Residential Detached" (RS-D) of the Land Use Element of the General Plan (GP) and "Single Unit Residential Detached" (RSD-A) of Coastal Land Use Plan (CLUP) of the Newport Beach Local Coastal Program (LCP).

The General Plan (GP) and the Local Coastal Plan (LCP) state that coastal bluffs are "significant natural landforms considered to be important scenic and visual resources within the coastal zone area of the City". Development along the coastal bluff side of Ocean Boulevard is one of the few areas in the coastal zone where there is development of the bluff face. According to Policies 4.4.3.8 and 4.4.3.9 of the LCP,

private development on bluff faces along Ocean Boulevard are permitted; however, it must be consistent with the predominant line of existing development or public improvements by providing public access and safety, protecting coastal resources, and protect public coastal views. Improvements on the bluff face shall only be permitted when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

The initial subdivision and development in this area occurred prior to adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in this area is allowed to continue on the bluff face provided it complies with various policies stated in the GP and LCP. The proposed residence would be constructed within the existing building footprint, at the 56-foot contour line to minimize the alteration of the bluff face and visually compatible with the adjacent residences by adhering to the top-of-curb height restriction.

Zoning Code

The subject property is zoned R-1-B (Single-Unit Residential Bluff Overlay District). Pursuant to Section 20.28.040 (Bluff Overlay District) and Map B6-Ocean Boulevard/Breakers, the subject property is located within the 3207-3309 Ocean Boulevard segment that has two (2) development areas: Area A and Area C. Development Area A is located between the front property line adjacent to Ocean Boulevard and the 48-foot contour line. Additionally, the lower portion of the site between the 33-foot contour line and the property line adjacent to Breakers Drive is within Area A. Within Area A, principal and accessory structures are allowed consistent with the R-1 zone. Development Area C is located between the 33-foot and 48-foot elevation contour lines. Limited accessory structures i.e. benches, guardrails, on-grade trails and stairways, covered walkways connecting a conforming garage and principal structure are allowed in Area C.

The proposed new residence complies with the R-1 and the Bluff Overlay development standards for floor area limit, building height, parking, residential design criteria, and development area, except for the requested front yard setback encroachment at the lower level. A complete analysis of the development standards is provided as Attachment PC No. 3. The maximum height of the new residence will be constructed below the height of the top of Ocean Boulevard curb. The new residence and the 3-car garage structure will be constructed within Area A and the existing building footprints (see Attachment PC No. 4). The design includes decks on the ocean side of the proposed residence that encroach into Area C. These encroachments are allowed as they cantilever 5 feet into Area C, and do not require ground support.

According to the information provided by the applicant, the proposed funicular can be engineered to exacting standards and custom designed to suit the unique topography and constraints of the site. The side of the cab can be designed to be clear to allow view

through to the bluff beyond. The proposed funicular is not listed as one of the permitted accessory structures that would be allowed in Area C, but covered walkways connecting a conforming garage and principle structure are allowed in this area. By comparison to a covered walkway, staff believes that the funicular is less bulky and intrusive while providing handicapped-assisted transportation from the upper to the lower building without traversing the existing stairways. Staff finds the proposed funicular equivalent to the structures permitted in Area C and is consistent with the Bluff Overlay requirements.

Variance Request

The applicant requests an approval of a Variance to allow the lower subterranean level to encroach into the required 10-foot front yard setback. The proposed front yard setbacks for the three building levels are:

Front Yard Setback

Section 20.52.090.F (Variances, Findings and Decision) of the Zoning Code requires the Planning Commission to make the following findings before approving a variance:

- A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;
- B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;
- C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;
- D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;
- E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and
- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

The basic intent of front yard setback is to provide adequate separation between structures on private property and the public right-of-way and to provide a consistent look from the public street. In this particular case, the proposed encroachment is below the existing and proposed finished grade, and will not be visible from Ocean Boulevard. The front property line is located approximately 21 feet from the Ocean Boulevard public walkway, and 50 feet from Ocean Boulevard.

Staff believes the findings for approval of the Variance request can be made in that the design of the structure is reasonable given topographic and regulation constraints. Further restrictions imposed by the California Coastal Commission results in a tighter development envelope and additional preservation of the existing bluff face. The project, as designed, will allow the property owner to construct a dwelling that meets their needs while limiting encroachment down and alteration of the coastal bluff.

The Variance would not constitute a special privilege as it allows the property owner to build a house compatible with the development of other lots in the vicinity. The proposed development is approximately 62.5% of the maximum allowed on the subject property. (The maximum allowable gross floor area is 7,674 square feet approximately and the total gross floor area that the applicant proposes for the subject property is 4,794 square feet). Granting the requested subterranean front yard setback encroachment allows the subject property to have a comparable dwelling size when compared to the sizes of newly-improved homes on similar parcels in the vicinity. Additionally, the Variance request will not adversely impact public views from Ocean Boulevard as it is subterranean and the overall residence adheres to the top-of-curb height restriction.

The granting of the applicant's request is consistent with the intent of the General Plan, Coastal Land Use Plan and Zoning Code. The granting of the Variance would not increase the density beyond what is planned for the area; will not adversely impact the designated public views from Ocean Boulevard as it adheres to the top-of-curb height restrictions; and will allow for more open coastal bluff face (expanded "green zone" as illustrated in Attachment No. PC 4) than is required by the Bluff Overlay. Staff, therefore, recommends Planning Commission approval based on the discussion and facts above. Conditions of approval have been incorporated into the attached draft resolution (Attachment No. PC 1) to assure that the project complies with GP and LCP policies related to bluff stabilization, minimization of bluff recession, and prevention of bluff erosion.

Alternatives

The following alternatives are available to the Planning Commission:

1. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any additional requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis.

Should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new findings and/or conditions.

2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission may deny the application and provide facts in support of denial to be included in the attached draft resolution for denial (Attachment No. PC 2).

Environmental Review

The proposed project has been reviewed and it has been determined that it is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines – Class 3 (New Construction or Conversion of Small Structures). This exemption includes construction of a single-family residence in a residential area. The proposed project is a single-family residence to be constructed in the R-1 (Single-Unit Residential) Zoning District.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Submitted by:

Prepared by:

Rosalinh Ung Associate Planner Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval with Findings and Conditions
- PC 2 Draft Resolution for Denial
- PC 3 Project Development Elements
- PC 4 Green Zone Exhibit
- PC 5 Project plans

Attachment No. PC 1

Draft Resolution for Approval

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING VARIANCE PERMIT NO. VA2012-003 FOR THE EVENSEN RESIDENCE LOCATED AT 3225 OCEAN BOULEVARD (PA2012-089)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Brion Jeannette Architecture, with respect to property located at 3225 Ocean Boulevard, and legally described as southeasterly one-half of Lot 14 and northwesterly one-half of Lot 15 of Tract 1026.
- 2. The applicant requests approval of a Variance to allow the construction of a new 3-level, single-family residence with the lower level encroaching 10 feet into the required 10-foot front yard setback.
- 3. The subject property is located within the Single-Unit Residential (R-1) Bluff Overlay Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
- 4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-A).
- 5. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Section 15303 Class 3 (New Construction or Conversion of Small Structures) which includes construction of a single-family residence and related accessory structures in a residential zone. The proposed project is a single-family residence to be constructed in the R-1 (Single-Unit Residential) Zoning District.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090 (Variances) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.

Facts in Support of Finding:

A-1. The subject property is located on a coastal bluff, south of Ocean Boulevard and north of Breakers Drive, adjacent to the Corona Del Mar State Beach. The subject property slopes from Ocean Boulevard down to the south at a slope ratio of approximately 2:1 for approximately 60 feet, and transitions to an approximate 1:1 slope that extends approximately 35 feet downward toward Breakers Drive. The lower portion of the site is relatively flat. The total slope height is 76 feet, measured from north of the site at Ocean Boulevard to south of the property at Breakers Drive. The subject property is within the Bluff Overlay District which has two development areas where principal and accessory structures are allowed to be constructed. Given the topography of the subject property, regulation constraints by the Bluff Overlay District, and further restrictions imposed by the California Coastal Commission, the new residence is being restricted to be developed within the existing building footprint thereby resulting in a more restrictive development envelope than to other R-1 zoned properties nearby.

Finding:

B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.

Facts in Support of Finding:

B-1. The Variance does not constitute the granting of a special privilege as it allows the property owner to develop a residence that is compatible with other lots in the vicinity that are identically zoned. The proposed residence is considerably smaller in floor area when compared to the sizes of other residences on similar sized lots in the vicinity. The project, as designed, will allow the property owner to construct a dwelling that meets their needs while limiting setback encroachment to the lower level and alteration of the coastal bluff.

Finding:

C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.

Facts in Support of Finding:

C-1. The proposed development is approximately 62.5% of the maximum allowed on the subject property. (The maximum allowable gross floor area is 7,674 square feet approximately and the total gross floor area that the applicant proposes for the subject property is 4,794 square feet). Granting the requested subterranean front yard setback encroachment allows the subject property to have a comparable dwelling size when compared to the sizes of newly-improved homes on similar parcels in the vicinity.

Finding:

D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

D-1. The Zoning Code provides the flexibility in application of land use and development regulations by way of permitting Variance applications. The Variance procedure is intended to resolve practical physical hardships resulting from the unique topography and lot configurations that exist in the City and on this property. The granting of this request is consistent with the intent of the established front yard setback as the encroachment would be subterranean and not visible from Ocean Boulevard. The upper levels maintain the required setback to ensure that there would be adequate flow of air and light to adjoining properties, to provide adequate separation between structures on private property and the public right-of-way, and to provide a consistent look from the public right-of-way.

Finding:

E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

E-1. The subject property is designated for single-family residential use and the granting of the Variance would not increase the density beyond what is planned for the area, and will not result in additional traffic, parking or demand for other services. The granting of the Variance request will not adversely impact public views from Ocean Boulevard since the subterranean front yard setback encroachment will not be visible from the street level, and will be approximately 21 feet from the existing sidewalk and 50 feet from Ocean Boulevard. The proposed encroachment will not affect the flow of air or light to adjoining residential properties in that the required 10-foot front yard setback is maintained at above grade level (at the middle and upper levels).

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

F.1. The granting of the applicant's request is consistent with the intent of the General Plan, Coastal Land Use Plan and Zoning Code as it would not increase the density beyond what is planned for the area; will not adversely impact the designated public views from Ocean Boulevard as it adheres to the top-of-curb height restrictions; and will allow for more open coastal bluff face than is required in the Development Area C by maintaining the existing building footprint. Furthermore, the approval of the Variance does not reduce the visible front yard and is therefore compatible with the neighborhood and consistent with the intent of front yard setback requirement.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby approves Variance Permit No. VA2012-003, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
- This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 6TH DAY OF SEPTEMBER, 2012.

AYES:
NOES:
ABSTAIN:
ABSENT:
BY:
Michael Toerge, Chairman
BY:
Fred Ameri. Secretary

Tmplt: 05/16/2012

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division

- 1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval. It shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
- 2. The natural bluff face shall be restored to its natural state if inadvertent alteration should occur during construction of the project.
- 3. Variance No. 2012-003 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
- 4. Prior to the issuance of a building or grading permit, a waiver of future shoreline protection during the economic life of the structure (75 years) shall be executed and recorded against the property. The waiver shall be binding upon all future owners and assignees. The waiver shall be reviewed and approved by the City Attorney prior to recordation.
- 5. Accessory structures shall be relocated or removed if threatened by coastal erosion. Accessory structures shall not be expanded and routine maintenance of accessory structures is permitted.
- 6. Prior to issuance of building permits, approval from the California Coastal Commission shall be required.
- 7. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
- 8. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. The plans shall comply with the City's Water Efficient Landscape Ordinance (Chapter 14.17) and Water Conservation Ordinance (Chapter 14.16) of the Municipal Code. These plans shall incorporate native, drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division, Public Works, and General Services Departments. All planting areas shall be provided with a permanent

- underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor.
- 9. All new landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- 10. Prior to the final of building permits, the applicant shall schedule an inspection by the Code and Water Quality Enforcement Division to confirm that all landscaping on the property and within the public right-of-way was installed in accordance with the approved plan.
- 11. Reclaimed water shall be used whenever available, assuming it is economically feasible.
- 12. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division, shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
- 13. Watering shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.) to minimize evaporation the following morning.
- 14. All leaks shall be investigated by a representative from the Code and Water Quality Enforcement Division and the Applicant shall complete all required repairs.
- 15. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites.
- 16. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 17. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
- 18. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages,

actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Evensen Residence Project including, but not limited to, Variance Permit No. VA2012-003. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

- 19. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, Cityadopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
- 20. Prior to issuance of the grading permit, the project applicant shall document to the City of Newport Beach Building Division that the project is designed and will be constructed to comply with current seismic safety standards and the current City-adopted version of the Uniform Building Code.
- 21. Prior to issuance of the grading permit, a geotechnical report provided by a licensed Certified Engineering Geologist or Geotechnical Engineer shall be submitted with construction drawings for plan check. The report shall include slope stability analyses and erosion rate estimates. The Building Division shall ensure that the project complies with the geotechnical recommendations included in the geologic investigation as well as additional requirements, if any, imposed by the Newport Beach Building Division. To assure stability, the development must maintain a minimum factor of safety of 1.5 against land-sliding for the economic life of the structure (75 years).
- 22. Prior to issuance of the grading permit, grading/drainage and shoring plan shall be submitted to the Building Division for review and approval.
- 23. The easterly stairway shall be removed and reconstructed on grade and it must comply with the CBC 2010 requirements.
- 24. Existing and new stairway landing shall have a dimension measured in the direction of travel not less than the width of the stairway.
- 25. The funicular shall be approved by a recognized testing agency (ASTM, ICC) and shall in compliance with the State of California Elevator Safety Code.

- 26. All projections including eaves and cantilever portion of trellis shall not be permitted to be closer than 2 feet to the property line.
- 27. All projections between 2 to 5 feet from the property line shall be one-hour rated.
- 28. Where vehicles leave the construction site and enter adjacent public streets, any visible track-out extending for more than fifty (50) feet from the access point shall be swept within thirty (30) minutes of deposition.
- 29. The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions. Construction equipment and materials shall be properly stored on the site when not in use.
- 30. A six-foot-high screen and security fence shall be placed around the construction site during construction.
- 31. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with 5 percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than 5 minutes.

i. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads. (See condition No. 34 above).
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.
- 32. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the

top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

Public Works

- 33. All improvements shall be constructed as required by the Municipal Code and the Public Works Department.
- 34. The applicant shall construct new concrete curb and gutter per City standards along Breakers Drive frontage.
- 35. The existing driveway shall be reconstructed per STD-162-L.
- 36. All existing private, non-standard improvements within the public right-of-way and/or or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
- 37. Encroachment permit shall be required for all work activities within the public right-of-way.
- 38. Additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector in case of damage done to public improvements surrounding the development site by the applicant.
- 39. All on-site drainage shall comply with the latest City water quality requirements.
- 40. A new sewer cleanout shall be installed on the existing sewer lateral per STD-406-L adjacent to the property line in the Breakers Drive public right-of-way.
- 41. No structural components shall be permitted to encroach into the Ocean Boulevard right-of-way, including, but not limited to tie backs and foundations for the new lower level that encroaches into the front yard setback area.
- 42. New and existing stairway and walls to Ocean Boulevard shall require City Council approval of an encroachment permit/agreement.

Attachment No. PC 2

Draft Resolution for Denial

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING VARIANCE PERMIT NO. VA2012-003 FOR THE EVENSEN RESIDENCE LOCATED AT 3225 OCEAN BOULEVARD (PA2012-089)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Brion Jeannette Architecture, with respect to property located at 3225 Ocean Boulevard, and legally described as southeasterly one-half of Lot 14 and northwesterly one-half of Lot 15 of Tract 1026.
- 2. The applicant requests approval of a Variance to allow the construction of a new 3-level, single-family residence with the lower level encroaching 10 feet into the required 10-foot front yard setback.
- 3. The subject property is located within the Single-Unit Residential (R-1) Bluff Overlay Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
- 4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single-Unit Residential Detached).
- 5. A public hearing was held on September 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.18.030 (Residential Zoning Districts General Development Standards), a 10-foot front yard setback is required for development of the subject property per Setback Map #S-10B. The topographic and regulatory constraints do not preclude the construction of a residence that would be compatible with surrounding lots. The proposed residence can be redesigned to comply with the required development standards and approval of the Variance is not necessary to preserve this substantial property right.

The Planning Commission may approve a variance only after making each of the required findings set forth in Section 20.52.090 (Variances). In this case, the Planning Commission was unable to make the required findings based upon the following:

- 1. The Planning Commission determined, in this case, that the proposed Variance for the proposed single-family residential unit is not consistent with the legislative intent of Title 20 of the NBMC and that findings required by Section 20.52.090 are not supported in this case. The proposed project may prove detrimental to the community.
- 2. The design, location, size, and characteristics of the proposed project are not compatible with the single-family residences in the vicinity. The development may result in negative impacts to residents in the vicinity and would not be compatible with the enjoyment of the nearby residential properties.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby denies Variance No. VA2012-003.
- 2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 6th DAY OF SEPTEMBER, 2012.

AYES:
NOES:
ABSTAIN:
ABSENT:
BY:
Michael Toerge, Chairman
BY:
Fred Ameri, Secretary

A \/ \(\cap \)

Attachment No. PC 3

Project Development Elements

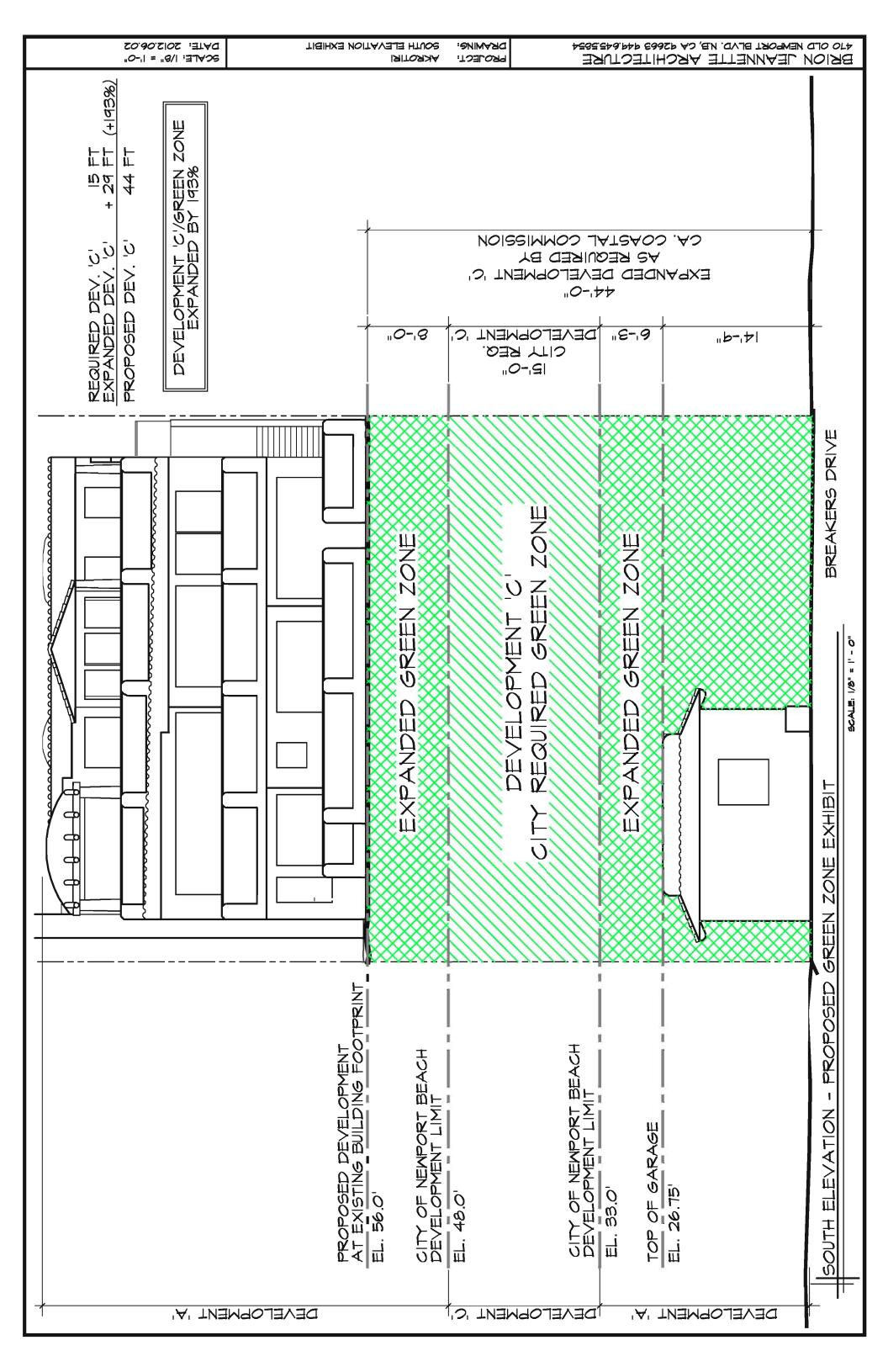
Attachment PC 3 Project Development Elements

PROJECT	REQUIRED OR PERMITTED	PROPOSED
ELEMENTS	201= 1	N. O.
Lot Size	6,817 sf.	No Change
Buildable area (lot minus setback areas)	5,116 sf.	No Change
Maximum gross floor area (1.5 x buildable area)	7,674 sf. (5,116 x 1.5)	Complies. Total :4,794 sf.
(1.5 X balldable area)		Main Dwelling:
Development Area A		5-car garage & exercise room. 514 31.
per Bluff Overlay District (between 48-ft. contour line and property line adjacent to Ocean Blvd. & between the 33-ft. contour line and property line adjacent to	Principal & accessory structures (BBQs, decks, patio covers, fences & walls, gazebos, fireplaces & fire pits, porches, spas & hot tubs, swimming pools, terrace, & similar structures)	Complies. Main Dwelling: between 56-ft. contour line and property line adjacent to Ocean Blvd Garage Structure: between 13-ft. contour line and property line adjacent to Breakers Dr.
Breakers Dr.)		to breakers br.
Development Area C per Bluff Overlay District (between 33-foot and 48-ft. contour lines)	Limited accessory structures (covered walkways, benches, guardrails & handrails, on-grade stairways, drainage devices, landscaping/irrigation systems, ongrade trails, property line fences & walls, & similar structures)	Complies. On-grade stairways (existing & new) & funicular
Building Height Limits:		
	▶24 ft. flat roof/29 ft. pitched roof above natural grade (NG)	Complies – 24 ft./28 ft. Complies - Top of elevation: 88.20'
	●Top of curb (TOC) @ 88.22' (Md. Pt.)	
Setbacks:		
Front (Ocean Blvd.):	10 ft.	Variance Required. Upper Level: 10 ft. Middle Level: 10 ft. Lower Level: 0 ft.
Sides:	4 ft.	Complies.
		4 ft.
Rear (Breakers Dr):		Complies.
	5 ft.	5 ft.
Parking	3 spaces	Complies. 3-car garage
<u> </u>	•	

¹Variance requested

Attachment No. PC 4

Green Zone Exhibit



Attachment No. PC 5

Project Plans

VICINITY MAP

CORONA DEL MAR STATE BEACH

PROJECT LOCATION

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N.T.S.



SHEET INDEX

## AERIAL PHOTO

#### CONSULTANTS DESIGN DATA LEGAL OWNER CHRIS & FELICIA EVENSEN NEWPORT BEACH GEOTECHNICAL: 3225 OCEAN BLVD. ZONE: GEOFIRM CORONA DEL MAR, CA 92625 801 GLENNEYRE ST., SUITE F LAGUNA BEACH, CA 92651 CODE: 2010 CRC, 2010 CBC, 2010 CPC CONTACT: BRION JEANNETTE ARCHITECTURE 2010 CEC, 2010 CMC, 2008 BUILDING (949) 645-5854 (949) 494-2122 ENERGY EFFICIENCY STANDARDS (BEES) LEGAL DESCRIPTION SURVEYOR: 2010 CAL GREEN BUILDING STANDARDS RGA CONSUTLANTS, INC. 34 GEORGETOWN IRVINE, CA 92612 TRACT 1026, 1/2 OF LOT 14 CONSTRUCTION TYPE: VB (SPRINKLERED) \$ 1/2 OF LOT 15 (949) 509-0909 OCCUPANCY: R-3/U A. P. NUMBER 052-120-15 SETBACKS: AREA: CORONA DEL MAR FRONT: 10'-0" CITY: NEWPORT BEACH 5'-0" REAR: COUNTY: ORANGE SCOPE OF WORK TOP OF CURB @ 88.22' (MD. PT.) MAXIMUM HEIGHT: 24'/29' ABV. N.G. DEMOLISH EXISTING HOUSE AND CONSTRUCT SQUARE FOOTAGE CALCS. A NEW THREE LEVEL SINGLE FAMILY RESIDENCE WITH A TWO STORY DETACHED GARAGE BUILDING. LOT SIZE: 6,817 S.F. 7,674 S.F. MAX. LIVABLE: (1.5 x 5,116) NOTE: BRION S. JEANNETTE IS THE D.P.I.R.C. -UPPER LEVEL: MIDDLE LEVEL: THE REGISTERED DESIGN PROFESSIONAL IN 1,724 LOWER LEVEL: RESPONSIBLE CHARGE SHALL BE RESPONSIBLE FOR EXERCISE AT GARAGE LEVEL: 263 REVIEWING AND COORDINATING SUBMITTAL TOTAL LIVABLE: 4,074 S.F. DOCUMENTS PREPARED BY OTHERS, INCLUDING PHASED AND DEFERRED SUBMITTAL ITEMS, FOR LOWER LEVEL MECH .: 69 S.F. COMPATIBILITY WITH THE DESIGN OF THE BUILDING 3-CAR GARAGE 651 S.F.

DO NOT SCALE DRAWINGS

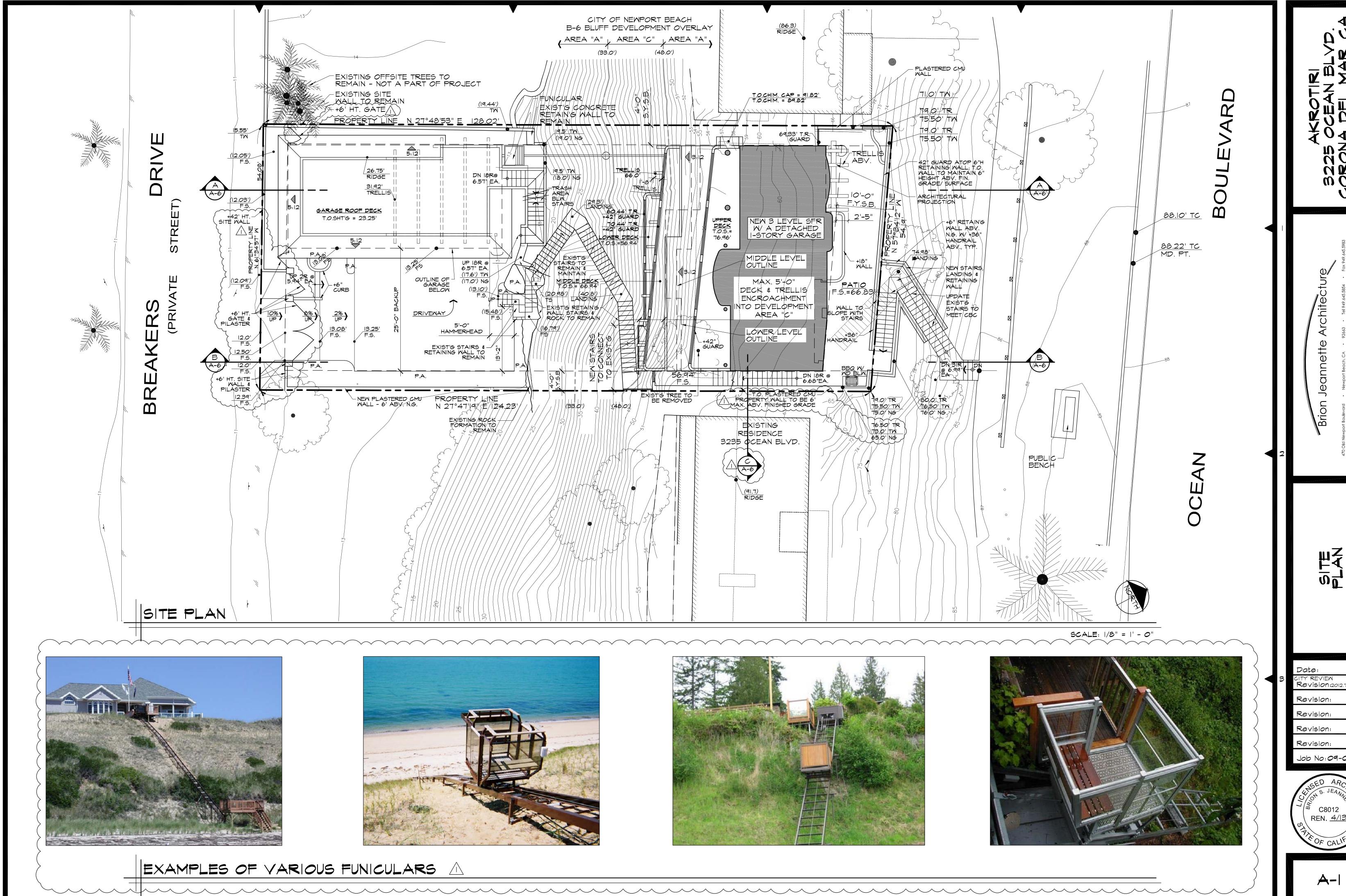
TOTAL STRUCTURE:

garage roof deck

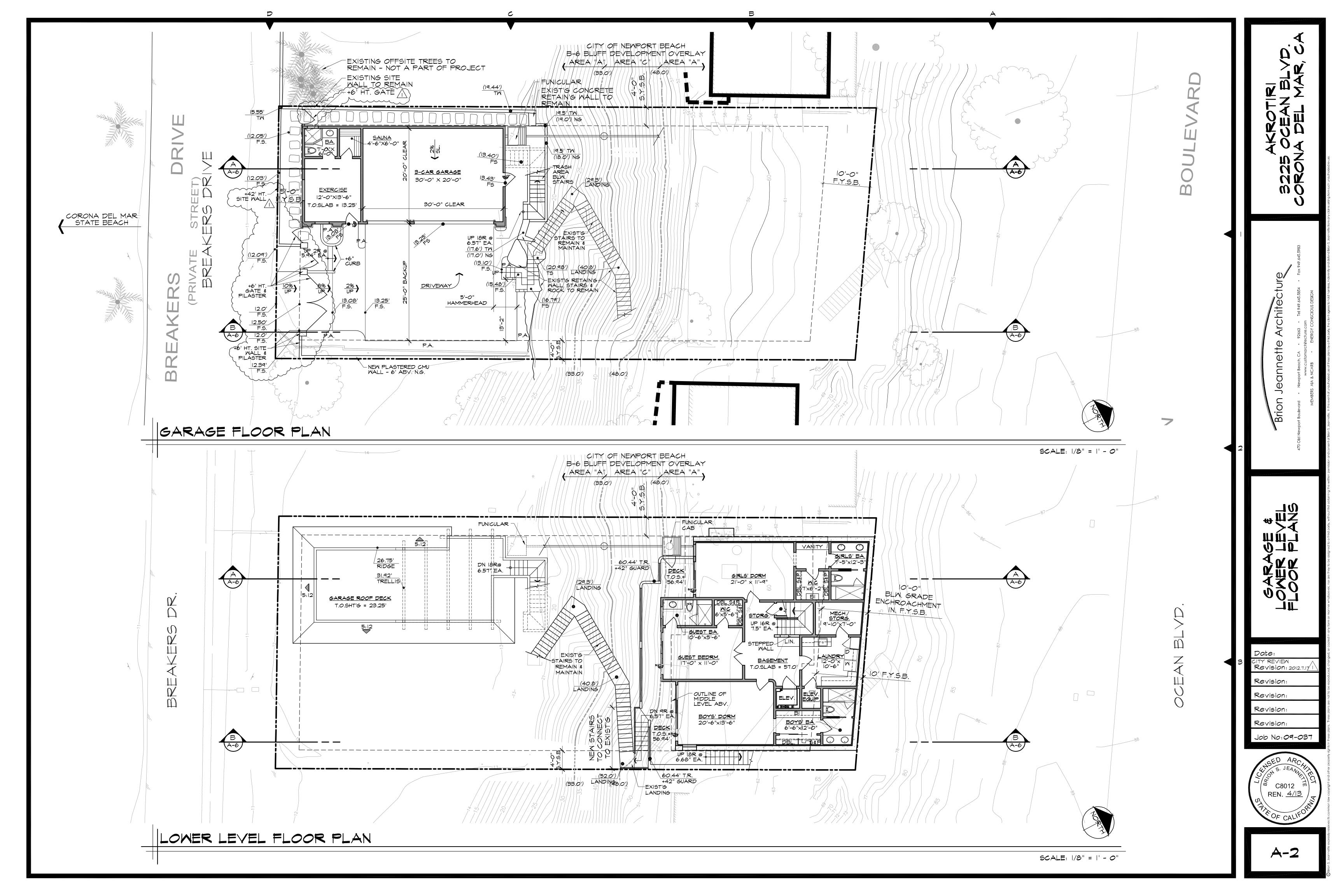
4.794 S.F.

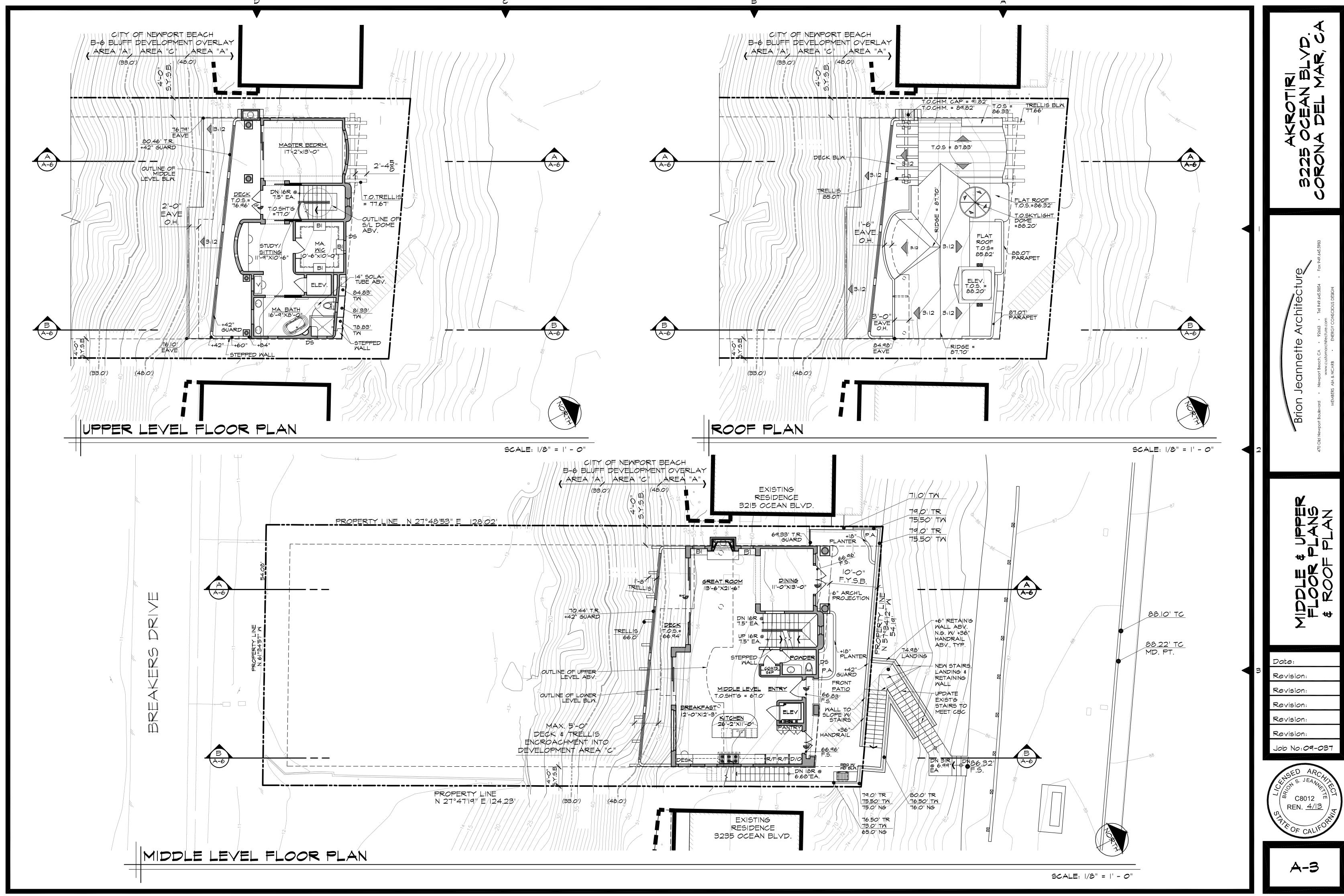
610 S.F.

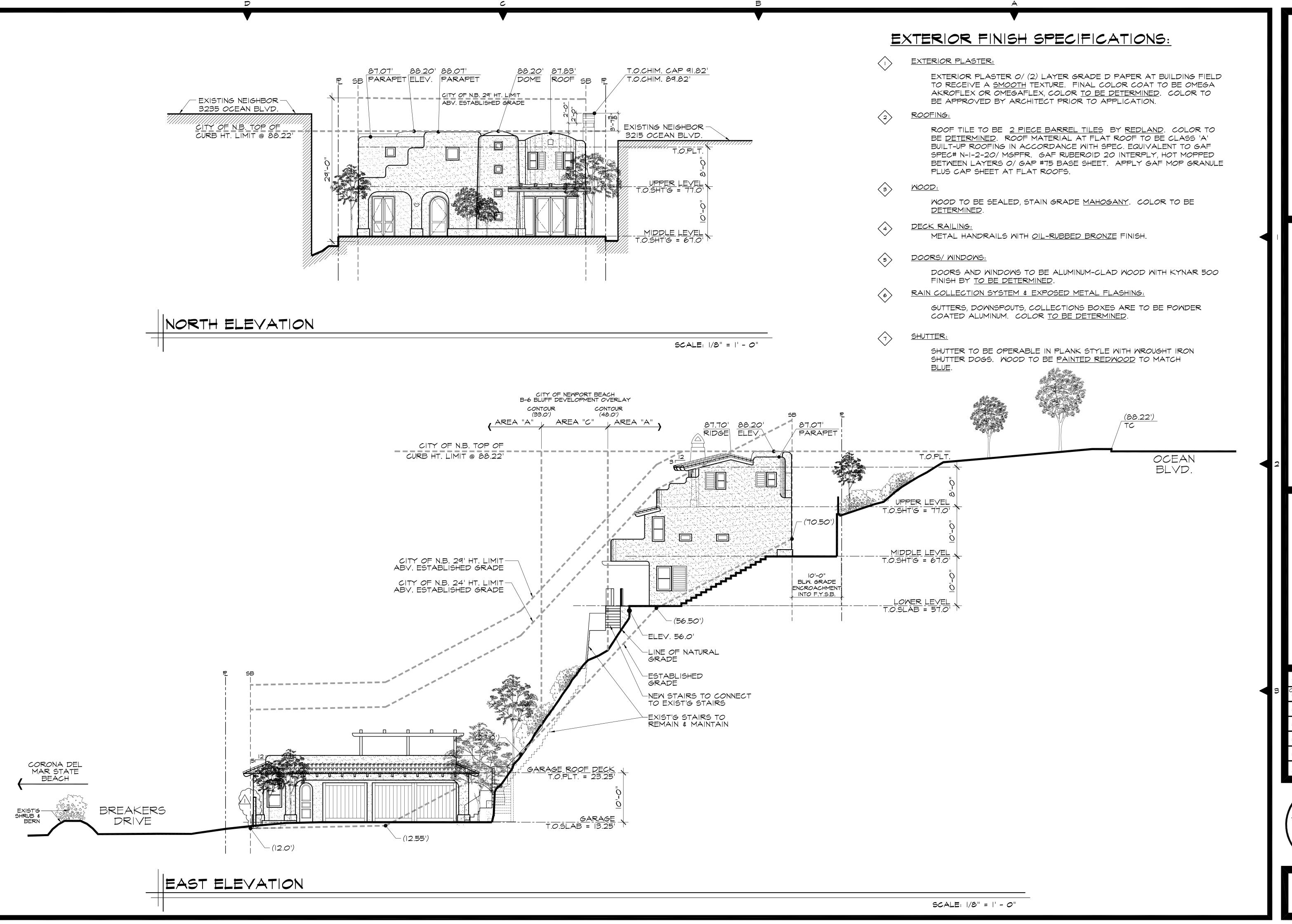
SITE CONTEXT PLAN & INFORMATION SITE PLAN A-2 GARAGE & LOWER LEVEL FLOOR PLANS MIDDLE LEVEL, UPPER LEVEL FLOOR PLANS, AND ROOF PLAN EXTERIOR ELEVATIONS EXTERIOR ELEVATIONS BUILDING SECTIONS PRELIMINARY LANDSCAPE PLAN TOPOGRAPHIC SURVEY GRADE PLANE EXHIBIT /2









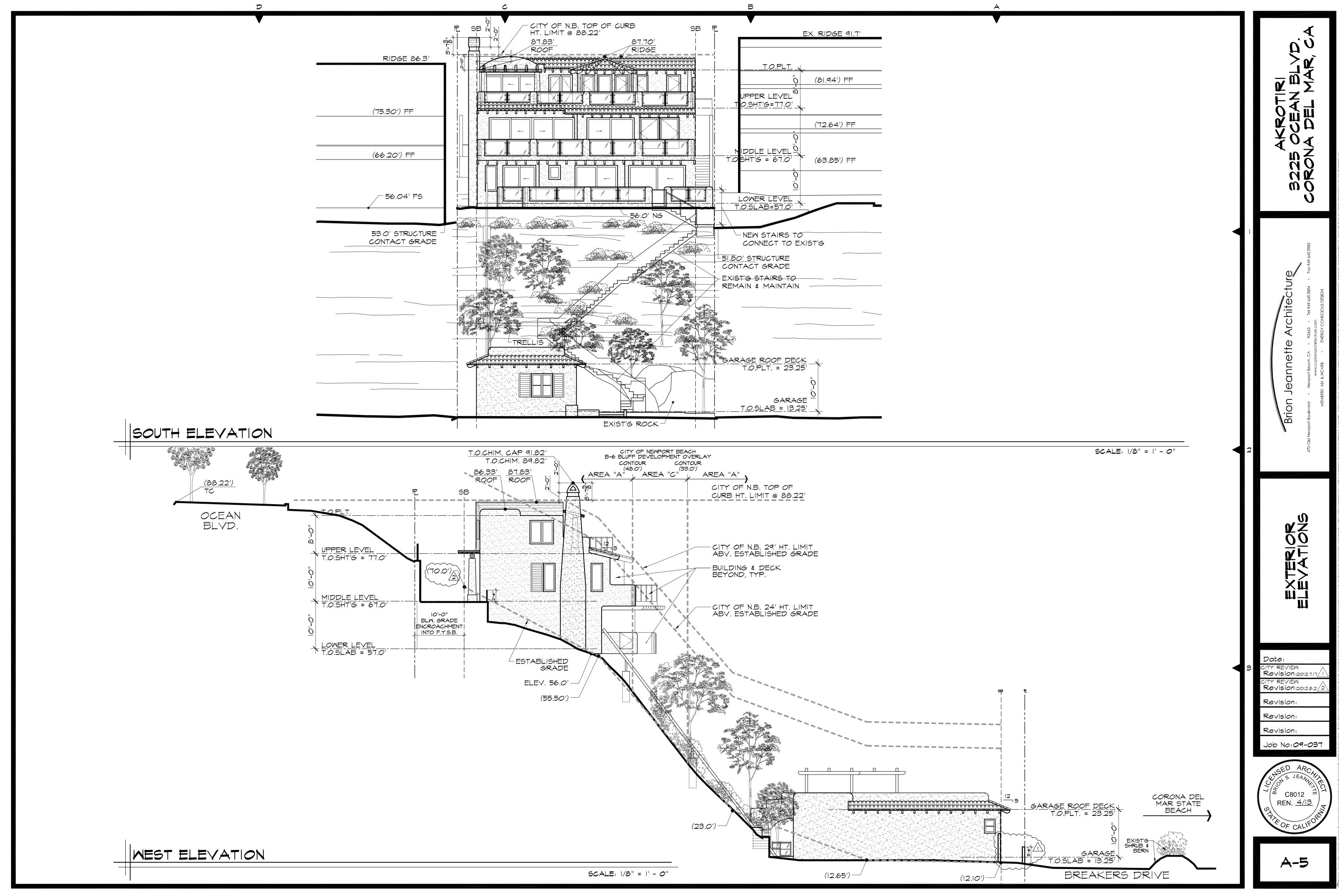


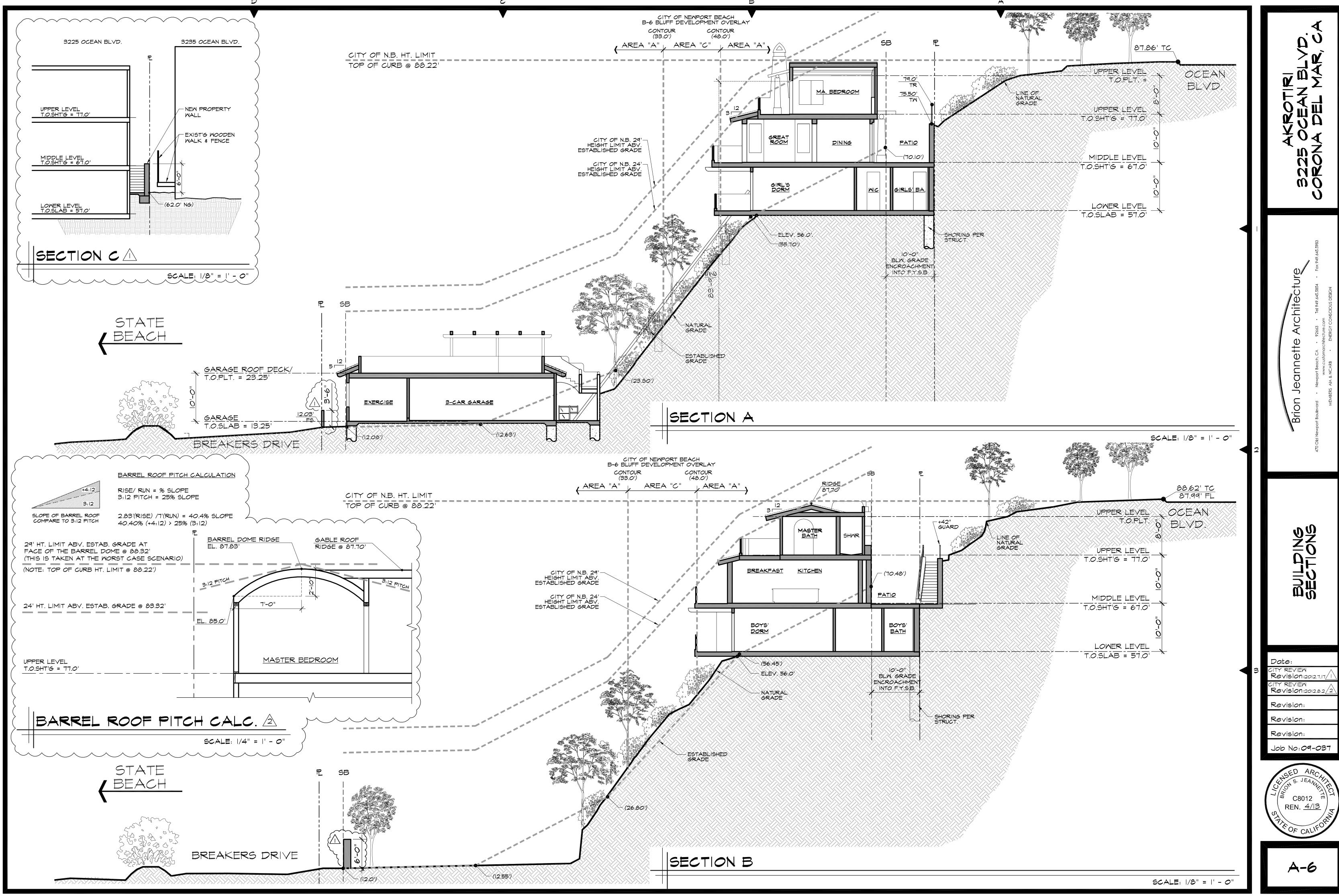
Revision:2012.7.1 Revision:

Revision: Revision:

Revision: Job No:09-037





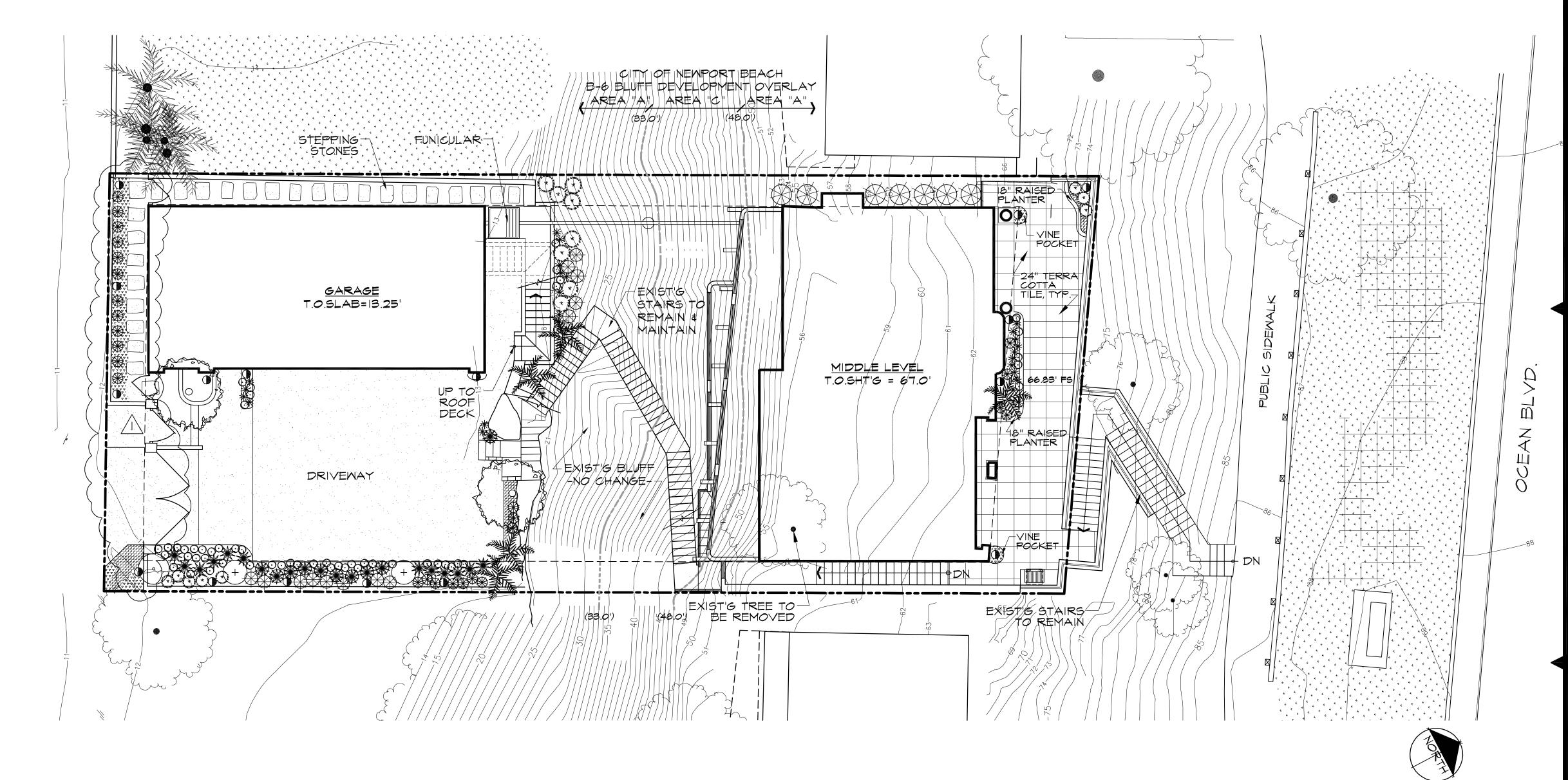


Job No:09-037

BY THE STATE OF CALIFORNIA OR THE U.S. FEDERAL GOVERNMENT SHALL BE UTILIZED WITHIN THE PROPERTY.

7. ANY EXISTING LANDSCAPING THAT DOESN'T MEET

8. DO NOT SCALE DRAWINGS.



LANDSCAPE PLAN

CORONA DEL MAR STATE BEACH

### PLANTING LEGEND:

| SHRUBS        | # GROUNDCOYERS                                 |                |                    |
|---------------|------------------------------------------------|----------------|--------------------|
| SYMB.         | BOTANICAL NAME/<br>COMMON NAME                 | <u>SIZE</u>    | MATURE<br>HT/WIDTH |
|               | SALVIA THYMOIDES<br>BLUE SAGE                  | 5 GAL          | 2'X3'              |
|               | BOUGAINVILLEA SUP<br>BOUGAINVILLEA             | 5 GAL          | 6'X3'              |
| +             | PAVONIA LASIOPETALA<br>TEXAS ROCK ROSE         | 5 <i>G</i> AL. | 3'X2'              |
| 1 100 H 100 M | ERYSIMUM HYERACIIFOLIUM<br>SIBERIAN WALLFLOWER | 5 GAL.         | 3'X6'              |
| *             | AEONIUM DECORUM<br>N.C.N.                      | 5 GAL.         | &'x&'              |
|               | LIMONIUM PEREZII<br>SEA LAVENDER               | 5 GAL.         | 3'X3'              |
| •             | HETREROMELES ARBUTIFOLIA<br>TOYON              | 5 <i>G</i> AL. | 6'X O'             |
|               | ALOE STRIATA<br>CORAL ALOE                     | 5 GAL.         | 2'X2'              |
|               | COTYLEDON ORBICULATA<br>PIG'S EAR              | 5 GAL.         | 2'X2'              |
|               | KNIPHOFIA UVARIA<br>BEE'S SUNSET TORCH LILY    | 5 GAL.         | 3'X3'              |
|               |                                                |                |                    |

| TREES                                   | POTANICAL NAME/                                       |             | MATURE           |
|-----------------------------------------|-------------------------------------------------------|-------------|------------------|
| SYMB.                                   | BOTANICAL NAME/<br>COMMON NAME                        | <u>SIZE</u> | HT/MIDTH         |
|                                         | ACACIA CULTRIFORMIS<br>KNIFE ACACIA                   | 24" BOX     | 15' X 15'        |
|                                         | BRAHEA ARMATA<br>MEXICAN BLUE PALM                    | 24" BOX     | 40' X 6'<br>HEAD |
|                                         | L<br>L CAMISSONIA CHERIANTH<br>L (BEACH EVENING PRIMR |             | L. 6'X2'         |
| / V V V V<br>Ø Ø Ø Ø Ø<br>Ø Ø Ø Ø Ø<br> | · (ICE PLANT)                                         | GRO         | UND COVER        |
|                                         |                                                       |             |                  |
|                                         |                                                       |             |                  |
|                                         |                                                       |             |                  |
|                                         |                                                       |             |                  |
|                                         |                                                       |             |                  |

### IRRIGATION NOTES:

- I. DRAIN INLETS IN LANDSCAPE AREAS >20' FROM THE TOP OF BLUFF WILL BE PLACED 1/2" ABOVE FINISHED GRADE TO PROVIDE FOR LOW-FLOW INFILTRATION AND REDUCE THE POTENTIAL FOR SEDIMENT ENTERING THE SITE DRAINAGE SYSTEM.
- 2. NO PERMANENT IRRIGATION SYSTEM SHALL BE UTILIZED ON THE COASTAL BLUFF. EXISTING IN-GROUND IRRIGATION SYSTEMS WITHIN THE BLUFF AREA SHALL BE DISCONNECTED AND CAPPED.
- 3. TEMPORARY ABOVE GROUND IRRIGATION ON THE COASTAL BLUFF TO ALLOW THE ESTABLISHMENT OF THE PLANTINGS IS ALLOWED.
- 4. THE TEMPORARY IRRIGATION SYSTEM SHALL HAVE AN AUTOMATIC IRRIGATION CONTROLLER TO ENSURE EFFICIENT WATER DISTRIBUTION. AUTOMATIC IRRIGATION CONTROLLERS SHALL BE EASILY ADJUSTABLE SO THAT SITE WATERING WILL BE APPROPRIATE FOR DAILY SITE WEATHER CONDITIONS. AUTOMATIC CONTROLLERS SHALL HAVE RAIN SHUTOFF SENSOR DEVICES SO THE IRRIGATION SYSTEMS WILL NOT UNNECESSARILY OPERATE ON RAINY
- 5. ALL PLANTINGS SHALL BE MAINTAINED IN GOOD CONDITION THROUGHOUT THE LIFE OF THE PROJECT, AND WHEN NECESSARY SHALL BE REPLACED WITH NEW PLANT MATERIALS.
- 6. IRRIGATION SYSTEM SHALL HAVE AN AUTOMATIC IRRIGATION CONTROLLER TO ENSURE EFFICIENT WATER DISTRIBUTION. AUTOMATIC IRRIGATION CONTROLLERS SHALL BE EASILY ADJUSTABLE SO THAT SITE WATERING WILL BE APPROPRIATE FOR DAILY SITE WEATHER CONDITIONS. AUTOMATIC CONTROLLERS SHALL HAVE RAIN SHUTOFF SENSOR DEVICES SO THE IRRIGATION SYSTEMS WILL NOT UNNECESSARILY OPERATE ON RAINY DAYS.

### LANDSCAPE NOTES:

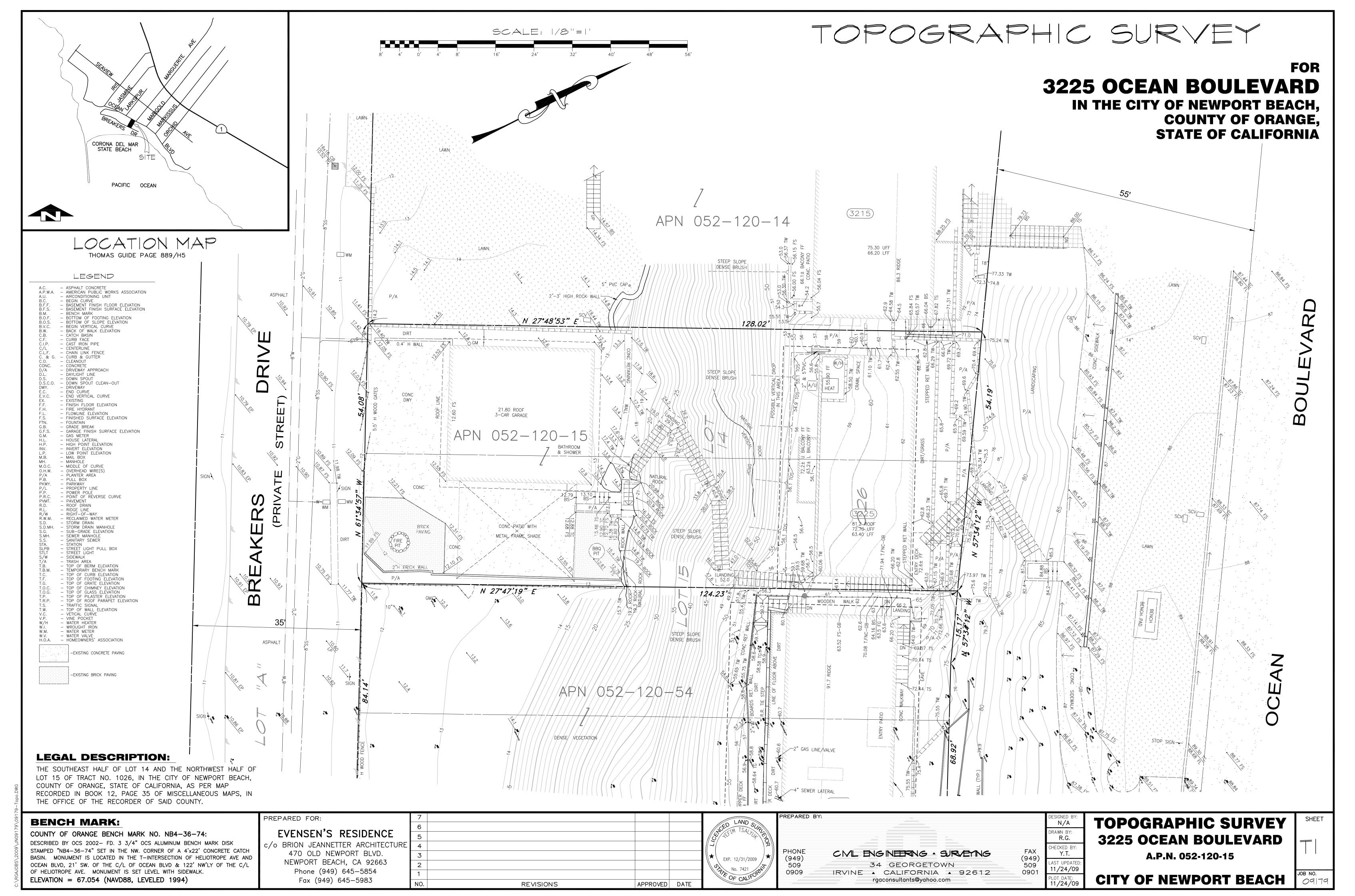
ALL PLANTING SHALL PROVIDE 90% COVERAGE WITHIN 90 DAYS AND SHALL BE REPEATED IF

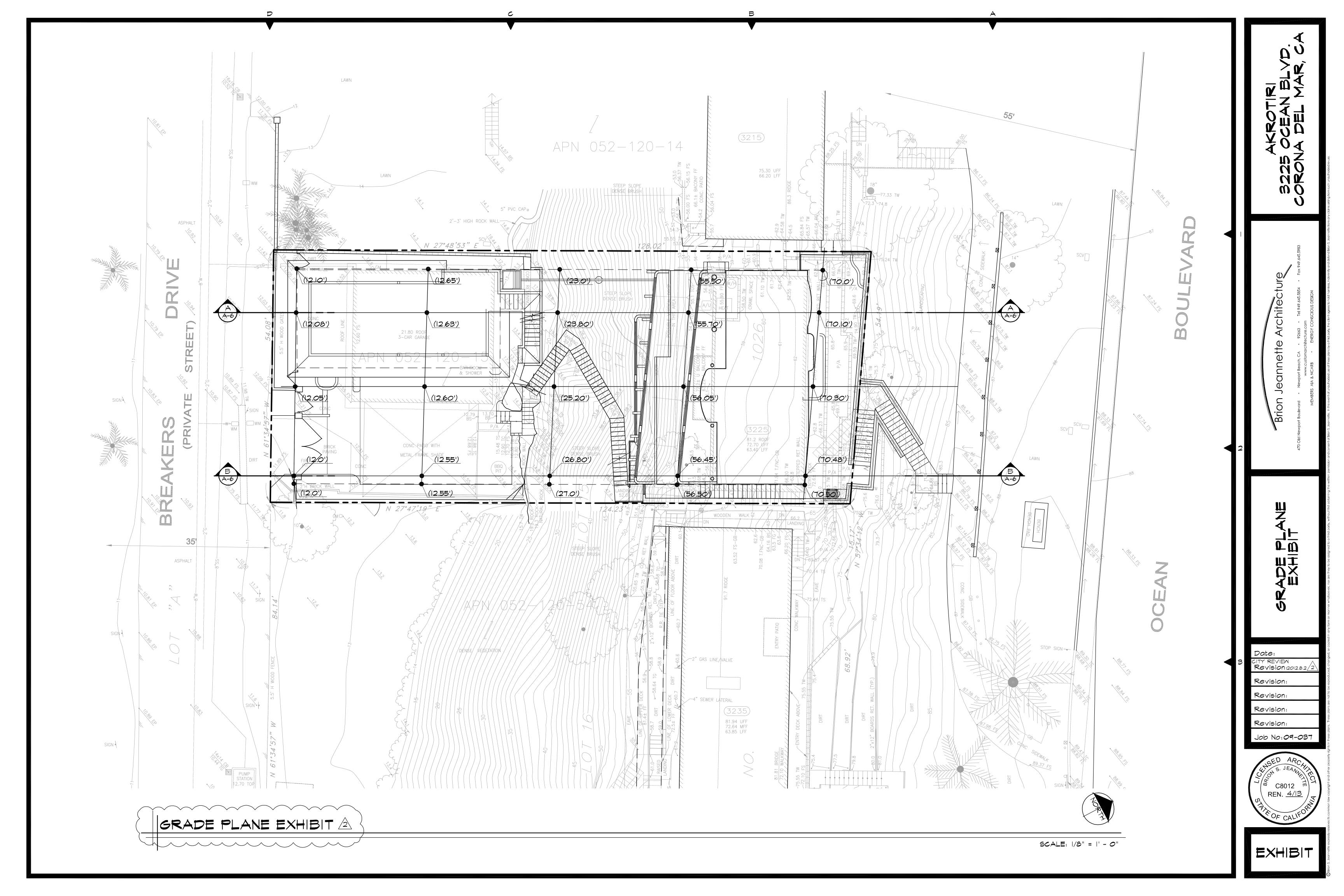
SCALE: 1/8" = 1' - 0"

- NECESSARY TO PROVIDE SUCH COVERAGE. 2. ALL PLANTINGS SHALL BE MAINTAINED IN GOOD CONDITION THROUGHOUT THE LIFE OF THE PROJECT, AND WHEN NECESSARY SHALL BE REPLACED WITH NEW PLANT MATERIALS.
- 3. LANDSCAPED AREAS NOT OCCUPIED BY HARDSCAPE SHALL BE PLANTED AND MAINTAINED FOR SLOPE STABILITY AND EROSION CONTROL.
- 4. TO MINIMIZE THE NEED FOR IRRIGATION AND MINIMIZE ENCROACHMENT OF NON-NATIVE PLANT SPECIES INTO ADJACENT OR NEARBY NATIVE PLANT AREAS, ALL LANDSCAPE SHALL CONSIST OF NATIVE AND DROUGHT TOLERANT PLANT
- SPECIES. 5. NO PLANT SPECIES LISTED AS PROBLEMATIC AND/OR INVASIVE BY THE CALIFORNIA NATIVE PLANT SOCIETY, THE CALIFORNIA EXOTIC PEST PLANT COUNCIL, OR AS MAY BE IDENTIFIED FROM TIME TO TIME BY THE STATE OF CALIFORNIA SHALL BE EMPLOYED OR ALLOWED TO
- NATURALIZE OR PERSIST ON THE SITE. 6. NO PLANT SPECIES LISTED AS A 'NOXIOUS WEED'
- THE ABOVE REQUIREMENTS SHALL BE REMOVED.



<u>|</u>-|





# ADDITIONAL MATERIALS RECEIVED

STAFF PRESENTATION

# Evensen Residence Variance No. VA2012-003 (PA2012-089) 3225 Ocean Blvd.

Planning Commission
September 6, 2012 meeting



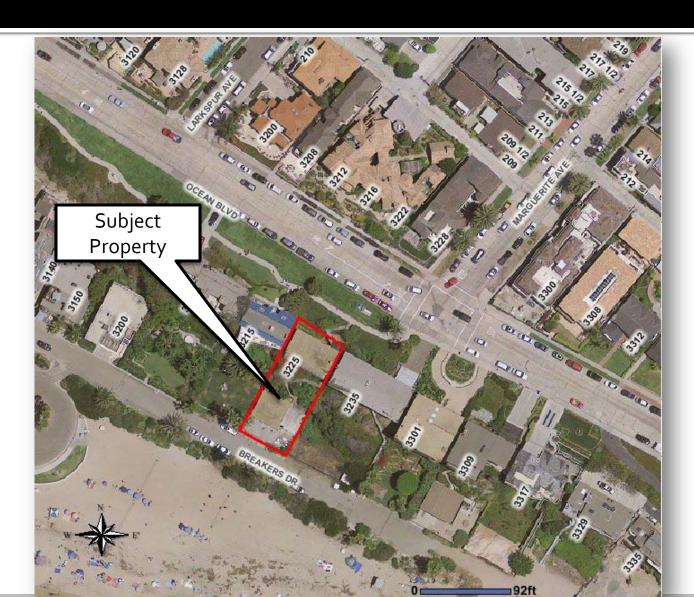
### Introduction



- A Variance request to allow:
  - Construct a new 3-level, single-family residence to encroach 10 feet into the 10-foot front yard setback at the lower level which will not be visible from Ocean Blvd.

# Vicinity Map





# Front Elevation – Ocean Blvd.



# Rear Elevation - Breakers Dr.





# Background



- An AIC was approved for a new 7,515 sf., 4-story residence with a two-story 3-car garage
- Coastal Commission denied Coastal Development Permit application because the new residence would extend beyond existing building footprint & new garage would be higher than the existing one.
- The applicant redesigned the project & eliminated one floor level in the main residence and second floor of the garage structure.

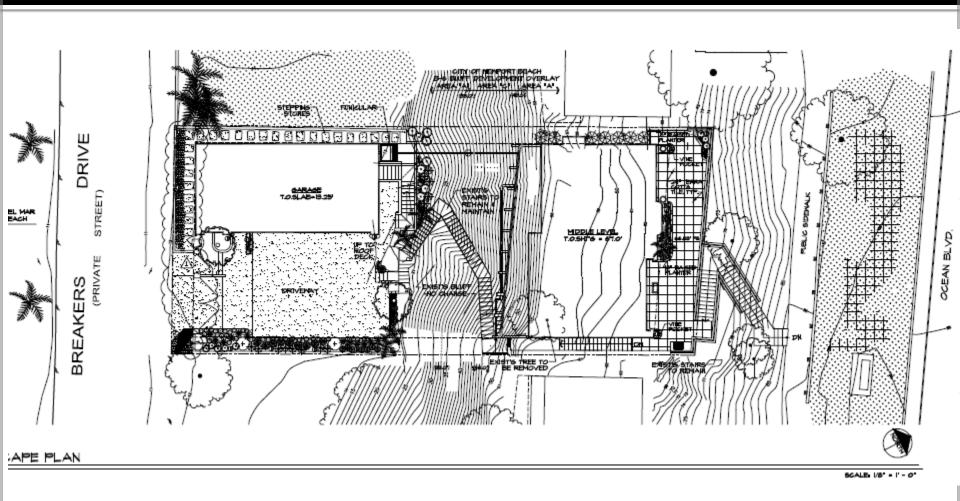
# **Project Details**



- Existing residence will be demolished
- New development consists:
  - A 3,880 sf., 3-level single-family residence &
  - A 914 sf. detached, 3-car garage & an exercise room with a 610 square-foot roof deck on top of the garage
- Complies with R-1-B standards, except for front yard setback encroachment

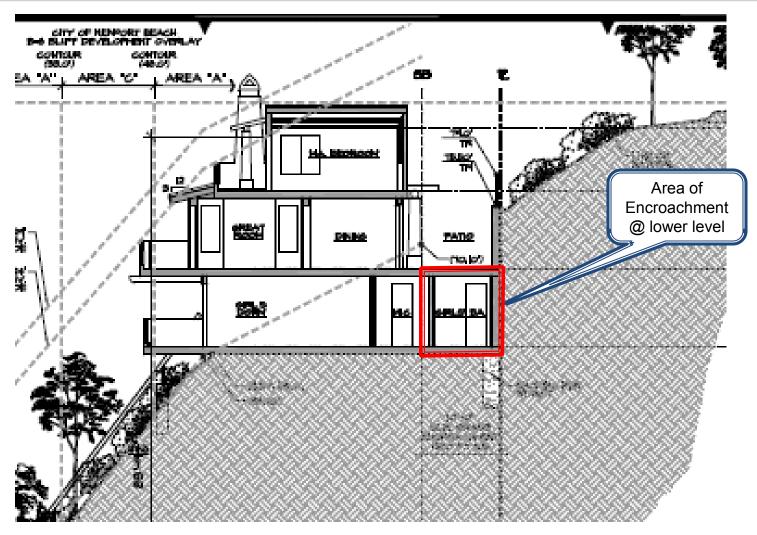
# Site Plan





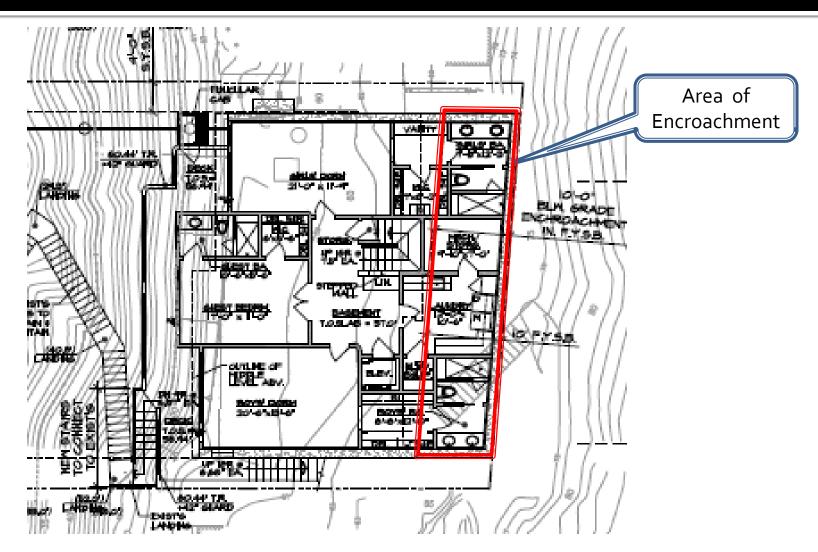
## **Cross Section**





### Floor Plan-Lower Level





# Variance Request



- 10-foot front yard encroachment
  - Would be subterranean and not visible from Ocean Boulevard
  - Would not impact public views from Ocean Boulevard
  - Would not affect the flow of air and/or light to adjoining properties nor create an inconsistent look from Ocean Boulevard
  - Would allow for more open coastal bluff face than is required in the Bluff Overlay District by maintaining the existing building footprint

### **CEQA Review**



 The project is categorically exempt per the California Environmental Quality Act (CEQA) Guidelines – Class 3 (New Construction or Conversion of Small Structures) which includes construction of a single-family residence in a residential area.

### Recommendation



- Conduct a public hearing
- Adopt Draft Resolution for the approval of Variance No. VA2012-003 and find the project is exempt per CEQA
- Alternatives:
  - Modify the project; or
  - Deny the project

# **Next Steps**



 If there is no appeal, proceed to Coastal Development Permit



#### For more information contact:

Rosalinh Ung 949-644-3208 rung@newportbeachca.gov www.newportbeachca.gov To: Planning Commissioners
Subject: Additional Material Received

Item 4a: Additional Material Received Planning Commission September 6, 2012

PA2012-089

From: Nizar Tannir [mailto:nizartannir@hotmail.com]
Sent: Wednesday, September 05, 2012 8:21 PM

To: Ung, Rosalinh

Subject: The Evensens Home at 3225 Ocean Blvd

Dear Planning Commissioners,

I own the property directly south of the Evensens home, at 3235 Ocean Blvd. I am supportive of the request to encroach into the front yard setback. The encroachment is not visible and will not have a negative effect in the neighborhood. Please approve the request.

Kindest regards, Nizar Tannir To: Planning Commissioners
Subject: Additional Material Received

Item 4b: Additional Material Received Planning Commission September 6, 2012

PA2012-089

From: Doug Circle [mailto:doug@circlevision.biz]
Sent: Thursday, September 06, 2012 9:02 AM

To: Ung, Rosalinh

Subject: PC 2012-089; 3225 Ocean Blvd.

Importance: High

#### **Dear Planning Commissioners:**

I own the property at 3415 Ocean Blvd. south of the Evensen home. I am supportive of the request to encroach into the front yard setback. The same encroachment was granted to me a few years back. The encroachment is not visible and will not have a negative effect in the neighborhood. Please approve Chris and Felicia's request.

Kindest regards,

#### Doug and Jan Circle

#### Douglas R. Circle

President / CEO Circle Vision, LLC 1006 Segovia Circle Placentia, CA 92870 T 714.630.0299 F 714.630.2399 C 714.742.1444 doug@circlevision.biz

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